



भारत का राजपत्र The Gazette of India

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सं. 47] नई दिल्ली, नवम्बर 13—नवम्बर 19, 2016, शनिवार/कार्तिक 22—कार्तिक 28, 1938
No. 47] NEW DELHI, NOVEMBER 13—NOVEMBER 19, 2016, SATURDAY/KARTIKA 22—KARTIKA 28, 1938

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

गृह मंत्रालय

नई दिल्ली, 8 नवम्बर, 2016

का.आ. 2237.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 (यथा संशोधित, 1987) के नियम 10 के उप-नियम (4) के अनुसरण में, गृह मंत्रालय के निम्नलिखित कार्यालय में हिन्दी का कार्यसाधक ज्ञान रखने वाले कर्मचारियों की संख्या 80% से अधिक हो जाने के फलस्वरूप इस कार्यालय को एतद्वारा अधिसूचित करती है:-

कार्यालय उप महानिरीक्षक, सशस्त्र सीमा बल, केन्द्रीयकृत प्रशिक्षण केन्द्र सपड़ी
डाकघर—ज्वालामुखी, जिला-कांगड़ा (हिमाचल प्रदेश)-176031

[सं.12017/01/2012-हिन्दी]

आर.के. मित्रा, संयुक्त सचिव

MINISTRY OF HOME AFFAIRS

New Delhi, the 8th November, 2016

S.O. 2237.—In pursuance of sub rule (4) of Rule 10 of the Official Language (Use for official purposes of the Union) Rules, 1976 (as amended in 1987), the Central Government hereby notifies the following office of the Ministry of Home Affairs, wherein the percentage of the staff, having working knowledge of Hindi has gone above 80% :—

**Office of the Dy. Inspector General Sashastra Seema Bal,
Centralised Training Center SSB, Sapri, P. O.- Jwalamukhi,
Distt- Kangra (HP)- 176031**

[No. 12017/01/2012-Hindi]

R. K. MITRA, Jt. Secy.

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय**(कार्मिक और प्रशिक्षण विभाग)**

नई दिल्ली, 27 अक्टूबर, 2016

का.आ. 2238.—केन्द्र सरकार, दिल्ली विशेष पुलिस स्थापन अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए हरियाणा सरकार के राज्यपाल के दिनांक 15.07.2016 की अधिसूचना संख्या 20/03/2016-3 एचजीआई द्वारा दी गई सहमति से एतद्वारा सूचना तकनीकी अधिनियम, 2000 (2000 का अधिनियम 21) की धारा 66 ई और 67 बी के अंतर्गत नाबालिग लड़की के यौन उत्पीड़न एवं अन्य दंडनीय अपराधों की जांच के संबंध में अथवा किए गए किन्हीं अपराधों अथवा इसी तरह के तथ्यों से उद्भूत अपराधों के सम्बन्ध में किए गए प्रयास, दुष्प्रेरण और षडयंत्र के मामले के अन्वेषण के सम्बन्ध में दिल्ली विशेष पुलिस स्थापन के सदस्यों की शक्तियों एवं क्षेत्राधिकार का विस्तार एतद्वारा संपूर्ण हरियाणा राज्य पर करती है।

[फा.सं. 228/51/2016-एवीडी-II]

एल.पी. शर्मा, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS**(Department of Personnel and Training)**New Delhi, the 27th October, 2016

S.O. 2238.—In exercise of the powers conferred by Sub-section (I) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the Governor of the State of Haryana communicated vide Notification No.20/03/2016-3HGI dated 15.07.2016 of Government of Haryana hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment in the whole of the State of Haryana for investigation into a complaint of sextortion of female minor girl and commission of offences punishable under section 66-E and 67-B of the Information Technology Act, 2000 (Act No. 21 of 2000), and any other offences(s), attempt, abetment and conspiracies in relation to or in connection with above mentioned offence and any other offence of offences committed in the course of the same transaction arising out of the same facts.

[F.No. 228/51/2016-AVD-II]

L. P. SHARMA, Under Secy.

नई दिल्ली, 11 नवम्बर, 2016

का.आ. 2239.—केन्द्र सरकार, एतद्वारा दिल्ली विशेष पुलिस स्थापन अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए हरियाणा राज्य सरकार, गृह विभाग की दिनांक 19.12.2014 की अधिसूचना सं. 2/109/2014-1 पीई के माध्यम से प्राप्त सहमति से जापान दूतावास, नई दिल्ली (नोट वर्बल संख्या

1/68/13) के माध्यम से राष्ट्रीय पुलिस एजेंसी, जापान द्वारा प्राप्त अनुरोध पत्र और विधिक सहायता हेतु विदेश मंत्रालय/गृह मंत्रालय, नई दिल्ली के पत्र निष्पादन से संबंधित सूचना प्रौद्योगिकी अधिनियम, 2000 की धारा 43 के साथ पठित धारा 66 के सदृश जापान दंड संहिता के अनुच्छेद 234-2 के अधीन दूरसंचार-लाइनों के माध्यम से अनधिकृत कमान्ड वाले मेलवेयरयुक्त ई-मेल भेजने जिसकी वजह से जापान परमाणविक एजेंसी के कर्मियों के द्वारा प्रयुक्त कम्प्यूटर सबयूटिलाइजेशन के प्रयोजन से विपरीत कार्य करेगा, से संबंधित अपराध तथा उपर्युक्त अपराध/अपराधों में किए गए प्रयासों, दुष्प्रेरणाओं और षडयंत्रों तथा उसी संव्यावहार में किए गए अथवा उन्हीं तथ्यों से उत्पन्न किसी अपराध या अपराधों में दोषी व्यक्तियों के विरुद्ध साथ ही साथ आपराधिक अभियोजन शुरू करने के लिए दिल्ली विशेष पुलिस स्थापन के सदस्यों की शक्तियों एवं क्षेत्राधिकार का समस्त हरियाणा राज्य में विस्तार करती है।

[फा. सं. 228/68/2014-एवीडी-II]

एस. पी. आर. त्रिपाठी, अवर सचिव

New Delhi, the 11th November, 2016

S.O. 2239.—In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Haryana, Home Department, vide Notification No. 2/109/2014-I PE dated 19.12.2014, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Haryana for investigation in respect of execution of Letters Rogatory received from the National Police Agency Japan through Embassy of Japan, New Delhi (Note verbale No. 1/68/13) and Ministry of External Affairs, New Delhi/Ministry of Home Affairs, New Delhi for legal assistance relating to offences of sending e-mail with a malware which contained unauthorized command that would cause the computer utilized for the business of the personnel of Japan Atomic Energy Agency to operate counter to the purpose of the sub utilization through telecommunication line which corresponding to Article 234-2 of the Penal Code of Japan corresponding to Section 43 read with 66 of Information Technology Act, 2000 (Act No. 21 of 2000) and any other offence(s), attempt, abetments and conspiracies in relation to or in connection with above mentioned offence and any other offence or offences committed in the course of the same transaction arising out of the same facts.

[F. No. 228/68/2014-AVD-II]

S. P. R. TRIPATHI, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 8 नवम्बर, 2016

का.आ. 2240.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार लाईववैल एविएशन सर्विस के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ संख्या 2/17 ऑफ 2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.11.2016 को प्राप्त हुआ था।

[सं. एल-11012/10/2009-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 8th November, 2016

S.O. 2240.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai (Ref. No. 2/17 of 2009) as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Livewell Aviation Services and their workmen, which was received by the Central Government on 08.11.2016.

[No. L-11012/10/2009-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI****PRESENT : M.V. DESHPANDE, Presiding Officer****REFERENCE NO. CGIT-2/17 of 2009****EMPLOYERS IN RELATION TO THE MANAGEMENT OF M/S. LIVEWELL AVIATION SERVICES**

The Livewell Aviation Services
 9, Narayan Udyog Bhawan
 Lalbaug Ind. Estate
 Dr. Ambedkar Road
 Lalbaug
 Mumbai-400 012.

AND**THEIR WORKMEN**

Shri Avinash L. Shinde
 Room No.10 A, 183/189
 Ramaji Madav Vani Chawl
 GIP Store Lane
 Lower Parel
 Mumbai-400 013.

APPEARANCES:

FOR THE EMPLOYER : Ms. Anjali Purav, Advocate

FOR THE WORKMEN : Mr. H. K. Vaidyanathan, Advocate

Mumbai, dated the 8th August, 2016**AWARD**

1. The Government of India, Ministry of Labour & Employment by its Order No. L-11012/10/2009 -IR (CM-I) dated 27/02/2009 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the management of M/s. Livewell Aviation Services, Mumbai in dismissing the services of Mr. Avinash L. Shinde, Utility Hand, w.e.f. 05/10/2007 is justified and legal? To what relief is the workman concerned entitled?”

2. After receipt of Reference, notices were issued to both the parties. They appeared through their representatives. Second party workman filed his Statement of Claim Ex-5. According to him, he was employed with First party Company since 16/8/2003 as a Loader. He was paid salary by cash for one year, few times by cheque and subsequently it was credited to bank. His last drawn salary was 3500/- per month. His service record was clean and spotless. According to him on 9/8/2007 when he was on duty one of the passengers had a very big luggage and he had helped him with the luggage. He had always been polite towards the passengers. That particular passenger was impressed with his work and offered him a tip of Rs. 100/-. He refused to accept the said tip, but the passenger forcibly had put Rs. 100/- in his pocket. But then Mr. Thomas the Manager misunderstood the entire episode and abused him. His entry pass was taken away by supervisor on the instruction of Mr. Thomas. On 10/8/2007 he reported to gate but he was not told anything and was called upon to come back on 12/8/2007. He was informed that he should wait for further instructions and he may not be provided with any work in future.

3. According to second party workman he wrote letters dated 10/9/2007, 4/10/2007 and 13/10/2007 but no reply was received by him. However he had received letter of termination dated 5/10/2007 on 19/10/2007. He therefore addressed a letter 17/12/2007 through his Advocate.

4. According to second party workman his termination is illegal and void-ab-initio and against the Principles of Natural Justice and he was not paid compensation under 25 F of I.D. Act. He was terminated without providing any opportunity to defend himself. No show-cause notice was given to him and no charge sheet was given for inquiry to be conducted before termination. Therefore he is entitled to reinstatement of services with full back wages and continuity of services on and from 5/10/2007.

5. According to him he has filed complaint of unfair labour practices before Labour Court. First party Company filed a preliminary objection in the said case stating that Central Government is appropriate Government and accordingly he has raised a demand of reinstatement of service and full back wages. Accordingly Desk Officer, Central Labour Ministry sent the Reference to the Tribunal.

6. First party company resisted the Statement of Claim by filing its Written Statement Ex-15. According to the first party as per the set norms the workers/utility hands who are engaged to provide services to the passengers such as baggage handling, wheel chair etc. are not supposed to ask or take tip from passengers. If it is found that workers/utility hand had asked or taken tip from passengers, then his air port entry pass is confiscated and he is not allowed to enter in airport premises for rendering services. Second party workman was caught while taking tip of Rs. 100/- on 10/8/2007 and his entry pass was confiscated. He is not entitled to enter the airport premises for rendering any services and thus the services of second party workman have to be terminated.

7. It is contended that Mr. Thomas, Manager of company had caught the workman Mr. Shinde demanding and pestering the passengers for money and then passenger taking out note of Rs. 100/- from his wallet and the workman accepting the same and keeping it in the pocket of his trouser. The supervisor Mr. James Swami, was also witness to the same. It is then contended that second party workman was paid a salary from very first month and there was no such condition of signing blank paper nor the second party workman has signed any blank paper. Second party workman used to remain absent and therefore show-cause notices were issued to him for unauthorized absence. According to First party Company since it was seen by Mr. Thomas, Manager as well as Mr. James Swamy, the Supervisor that the workman had demanded and pestered the passenger to get the money and there was no question of inquiring about the entire facts. Since the second party workman had indulged in demanding and accepting money from the passengers, his entry pass was confiscated and as such his termination is legal and proper. Since he is not entitled to reinstatement and as such the services of second party workman were terminated in terms of his appointment letter and also as per the terms of the settlement with the union. Thus the first party company has prayed that the Reference be dismissed with cost.

8. Following are the issues for my determination. I record my findings thereon for the reasons to follow:

Sr. no.	Issues	Findings
1.	Whether the action of management of M/s. Livewell Aviation Services, Mumbai in dismissing the services of Avinash L. Shinde, Utility Hand w.e.f. 5/10/2007 is justified and legal?	No.
2.	Whether Second party workman is entitled to any relief?	Yes
3.	What order?	As per order below.

REASONS

ISSUE No. 1:

9. At the outset it may be stated that the first party company has not led any oral evidence. The workman has filed affidavit in lieu of examination in chief at Ex- 10. However his evidence has gone unchallenged and there is no cross-examination directed against him by the first party company. In his evidence Mr. Avinash Shinde has specifically stated that he helped the passenger with the luggage and the said passenger though offered him a tip of Rs. 100/- he refused to accept the said tip but the passenger put tip in his pocket and then this episode was misunderstood by Manager Mr. Thomas. Subsequently his gate pass was confiscated and he was not provided any work. Lastly the termination letter dated 5/10/2007 which was received by second party workman on 19/10/2007. It is thus clear from his evidence that no enquiry was conducted nor any show cause notice was given to him.

10. It is submitted by the first party in his Written Statement that since the episode was witnessed by Mr. Thomas, Manager as well as Mr. James Swamy, Supervisor, there is no question of holding inquiry. But then first party company has not adduced evidence of Mr. James, Supervisor and Mr. Thomas, Manager to substantiate the charges made against the workman to the effect that he had demanded tip of Rs. 100/- from the said passenger and accepted the money from said passenger in their presence. Non-examination of the witnesses namely Mr. Swamy, Supervisor and Mr. Thomas, Manager goes to the root of matter.

11. In this respect Ld. Advocate for the second party workman resorted to the decision in case of **Joginder Singh V/s P.O. Labour Court, Patiyala and Anr 2004 III CLR 189**, wherein the Hon'ble Court observed that;

“Petitioner-workman terminated from services without holding inquiry. Labour Court held termination to be justified in the background of misconduct committed by the petitioner. Petition is challenging judgment and Award of Labour Court. It is held that no departmental inquiry was held nor the petitioner was served with any notice obviously neither the Principles of Natural Justice were kept in view nor was any inquiry held

against petitioner by the management. Even the alleged misconduct was not proved. It is held that termination cannot be sustained."

12. He also seeks to rely on the decision in case of **Dehra Friends Co-operative Transport Society Ltd. V/s. P.P. Anr 2008 LLR 284**, wherein it is held that;

"The termination of a workman without conducting of inquiry, without payment of retrenchment compensation and one month's pay in lieu of notice as stipulated by Section 25F of I.D. Act is liable to set aside and the workman will be entitled to reinstatement."

13. It is observed that the workman stated in affidavit that he was not employed till date in spite of his best efforts to secure an alternative employment. So he has been rightly awarded back wages.

14. In this respect it is rightly pointed out on behalf of the second party workman that he wrote letters mentioning therein the true state of affairs but his letters were not replied and then he received termination letter even without paying retrenchment compensation and without holding any inquiry. It is specifically contended in his affidavit that he was not given opportunity to defend himself. In view of that it was expected of first party to adduce evidence. But then no evidence is adduced by the first party company. As such the alleged misconduct is not proved by the first party by adducing evidence.

15. In the light of above facts and circumstances and Rulings herein referred above I am in opinion that the action of management M/s. Livewell Aviation Services, Mumbai in dismissing the services of Mr. Avinash L. Shinde w.e.f. 5/10/2007 is unjustified and illegal. Issue no 1 is therefore answered accordingly.

Issue Nos. 2 and 3:

16. In view of my findings to issue No. 1, it can be said that the termination of second party workman Mr. Shinde is illegal and unjustified and therefore he is entitled to reinstatement with full back-wages as he is unemployed till date and he has not secured alternate employment. Accordingly I decide Issue No. 2.

17. In the result I pass following order:

ORDER

1. Reference is allowed with no order as to costs.
2. It is declared that the action of management in dismissing the services of Mr. Avinash L. Shinde is illegal and unjustified.
3. First party Company is directed to reinstate the second party workman with continuity of services and full back wages on and from 05/10/2007.

Date: 08.08.2016

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 8 नवम्बर, 2016

का.आ. 2241.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एयर इंडिया लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ संख्या 2/1 ऑफ 2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.11.2016 को प्राप्त हुआ था।

[सं. एल-20013/2/2016-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 8th November, 2016

S.O. 2241.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai (Ref. No. 2/1 of 2014) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. Air India Ltd. and their workmen, which was received by the Central Government on 08.11.2016.

[No. L-20013/2/2016-IR (CM-1)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI****PRESENT : M.V. DESHPANDE, Presiding Officer****COMPLAINT NO.CGIT-2/1 of 2014**

(Arising out of Ref.CGIT-2/27 of 2013)

All India Cabin Crew Association
L-401, Kalpita Enclave
Swamy Nityanand Marg
Opp. Vijaynagar Society
Andheri (E)
Mumbai-400 069

...Complainant

V/s.

Chairman & Managing Director
Air India Ltd., Airlines House
113, Gurudwara Rakabganj Road
New Delhi-110 001

...Opponent

APPEARANCES:

FOR THE COMPLAINANT : Mr. V.B. Kumar, Advocate

FOR THE OPPONENT : Mr. L.L. D'Souza, Representative

Mumbai, dated the 14th September, 2016**AWARD**

This Complaint is filed by the complainant under Section 33-A of Industrial Disputes Act, 1947 hereinafter for brevity referred as I.D. Act. According to the complainant it is mandatory on the part of the employer to seek permission in writing from the Tribunal before discharging the services of workman under I.D. Act. The Opponent/management have illegally dismissed 13 workmen who are members of complainant Union. Therefore the Complainant Union prays to declare the terminations as illegal and reinstate the workmen with back wages and other benefits.

2. The Opponent/ management filed their Reply/ Written Statement at Ex-8. According to the opponent, the Association has no locus-standi to file a complaint under Section 33 A of I.D. Act which stipulates that a complaint can be filed only by an employee aggrieved by any contravention of the provisions of Section 33. Therefore the complaint is not maintainable. They denied all the allegations/ contentions made in the complaint and prayed to reject the complaint.

3. On 08/07/2016 complainant filed application along with an affidavit in support to withdraw the complaint stating that the termination orders in respect of 12 cabin crew were withdrawn and the said employees have joined their duties. One of the crew member is contesting the approval application u/s 33 2 (b). Therefore the complainant Union prays to allow them to withdraw the complaint. Opponent / Management filed their say to the said application. Orders were passed on the said application. Accordingly I pass the following order:

ORDER

The complaint stands disposed of as withdrawn.

Date: 14.09.2016

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 8 नवम्बर, 2016

का.आ. 2242.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सी.पी.एल. आई.पी. लिमिटेड के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ संख्या 2/45 ऑफ 2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.11.2016 को प्राप्त हुआ था।

[सं. एल-11012/24/2015-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 8th November, 2016

S.O. 2242.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai (Ref. No. 2/45 of 2015) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. Cargo Partners Logistics India Pvt. Ltd. and their workmen, which was received by the Central Government on 08.11.2016.

[No. L-11012/24/2015-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT : M.V. DESHPANDE, Presiding Officer

REFERENCE NO. CGIT-2/45 of 2015

**EMPLOYERS IN RELATION TO THE MANAGEMENT OF M/S. CARGO PARTNERS
LOGISTICS INDIA PVT. LTD.**

The Regional Manager
M/s. Cargo Partners, Logistics India Pvt. Ltd.
129/130/131, 1st floor, Sahar Cargo Estate
Opp. J.B. Nagar
Andheri, Mumbai-400 099.

AND

THEIR WORKMAN

The President
Maharashtra Nav Nirman Cha Kamgar Sena
BMC Parking Plaza Building, G-North
Dadar (W)
Mumbai-400 028.

APPEARANCES:

FOR THE EMPLOYER : No appearance

FOR THE WORKMAN : No appearance

Mumbai, dated the 14th September, 2016

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-11012/24/2015-IR (CM-I), dated 19.08.2015 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the termination of 8 workmen namely (a) Mr. Michael Pathrose (b) Mr.D.V. Verma, (c) Mr. Nixon D’Cruz (d) Mr. Iqbal Patel (e) Mr. DevendraSatamkar (f) Mr. MolindKadam (g) Mr. Philip Baretto (h) Mr. Rajendra Sonawane by the management of M/s. Cargo Partners Logistics India Pvt. Ltd. w.e.f. 30.12.2015 is lawful and justified? To what relief the workmen are entitled to ?”

2. After receipt of the Reference, notices were issued to both the parties. Acknowledgement of notice served on the second party workman is at Ex-3.Matter was adjourned on several occasions for filing Statement of Claim by second party/ Workman. Neither second party/Workman appeared before this Tribunal nor filed his Statement of claim. Without Statement of claim, the Reference cannot be decided on merits and the same deserves to be dismissed. Thus I pass the following order:

ORDER

Reference stands dismissed for want of prosecution.

Date: 14.09.2016

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 8 नवम्बर, 2016

का.आ. 2243.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनाईटेड बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ सं. 50/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.11.2016 को प्राप्त हुआ था।

[सं. एल-12011/87/2007-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 8th November, 2016

S.O. 2243.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 50/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure in the Industrial Dispute between the management of United Bank of India and their workmen, received by the Central Government on 08.11.2016.

[No. L-12011/87/2007-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR****Present:**

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 50/2007**Date of Passing Order – 24th June, 2016****Between:**

The Chief Regional Manager,
United Bank of India, Orissa-I Region,
Plot No. A-83, Kalpana Area,
Bhubaneswar (Orissa)

...1st Party-Management.**(And)**

The Secretary,
United Bank of India Employees Union,
Orissa State Committee,
C/o. United Bank of India,
B-56, Sahidnagar, Bhubaneswar (Orissa)

...2nd Party-Union.**Appearances:**None ... For the 1st Party-Management.None ... For the 2nd Party-Union.**ORDER**

Pursuant to the letter No. L-12011/87/2007-IR(B-II), dated 20/22.10.2010, the parties were noticed afresh to file their statements so as to enable the Tribunal to adjudicate upon their disputes. The 2nd party-Union files its statement of claim on 02.12.2010, whereas the 1st Party-Management submitted its written statements on 27.11.2013. When the case is taken up for settlement of issues and hearing both the parties failed to make their appearance. The reference/case was adjourned from time to time expecting the parties to make their appearance to prosecute their disputes. It is worthy to mention here that the reference was returned earlier to the Ministry with a no-dispute award for non-appearance of the parties. In the above back-drops when the parties are found absent there is no alternative before the Tribunal than to presume that either they have lost their interest in the case or they might have resolved their disputes amicably out of

the court. In the given circumstances a no-dispute award is required to be passed and accordingly a no-dispute award is passed in the case.

2. The reference is answered in the above terms.

Dictated & Corrected by me.

B.C. RATH, Presiding Officer

नई दिल्ली, 8 नवम्बर, 2016

का.आ. 2244.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोचीन के पंचाट (संदर्भ सं. 40/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.11.2016 को प्राप्त हुआ था।

[सं. एल-12012/54/2013-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 8th November, 2016

S.O. 2244.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 40/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Cochin as shown in the Annexure in the Industrial Dispute between the management of Punjab National Bank, Vazhakkad Branch, Dist. and their workmen, received by the Central Government on 08.11.2016.

[No. L-12012/54/2013-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present: Shri.K. Sasidharan, B.Sc., LLB, Presiding Officer

(Friday the 09th day of September, 2016/18th Bhadrapada, 1938)

ID 40/2013

Workman : Smt. Divya P.V.,
Puthanpurayil House,
Chekkode P.O.,
Vazhakkad,
Dist. Malappuram – 673645.

By Adv. Shri. Prasad. T

Management : The Branch Manager,
Punjab National Bank,
Vazhakkad Branch,
Dist. Malappuram – 673640.

By Adv. Shri P. Ramakrishnan

This case coming up for final hearing on 01.09.2016 and this Tribunal-cum-Labour Court on 09.09.2016 passed the following:

AWARD

This is a reference under clause (d) of sub-section(1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (Act 14 of 1947) for adjudication.

2. The dispute referred for adjudication is:

“Whether the action of the management of Punjab National Bank in not granting terminal benefits to Smt. Divya P. V. temporary part time sweeper at their Vazhakkad Branch prior to her termination is correct? What relief she is entitled to?”

3. After receipt of the Order No.L-12012/54/2013-IR(B-II) dated 08.08.2013 issued by the Ministry of Labour, Government of India, summons was issued to the parties to appear and submit their pleadings. On receipt of the summons the parties entered appearance through counsel and submitted their pleadings.

4. The contentions in the claim statement filed by the workman in brief are as follows:-

The workman joined the services of the management bank at their Vazhakkad branch, as a part-time sweeper in February, 2010. Since then she discharged the duty assigned to her to the best of her ability and to the satisfaction of the officials of the management bank. The dedicated work rendered by the workman was appreciated by the officials of the management bank on several occasions. On 31.05.2012 the Manager of the Vazhakkad branch informed that the workman is terminated from the post of sweeper. The action of the management is illegal, unjust, unsustainable and against the principles of natural justice. The dismissal from service without any notice or enquiry is illegal and improper. The workman has not committed any acts of misconduct. She was employed in the management bank continuously and without any break from 01.02.2010 to 31.05.2012. The denial of employment to the workman by the management bank is an act of unfair labour practice. The workman is entitled to be reinstated in service with full back wages, continuity of service and other attendant benefits.

5. Before terminating her from the post of sweeper she was assigned the duty to clean the ATM counter of the bank for two months, for which she was paid @ ₹500/- on each occasion. The management bank has not paid arrears of wages amounting to ₹2,500/- for five months to the workman. The mother-in-law of the workman Smt. P. Bharathi was employed in the management bank. She was superannuated from the services of the bank on 31.01.2010. With effect from 01.02.2010 the workman was employed in the management bank till she was terminated on 31.05.2012. She received @ ₹57/- per day for the services rendered by her in the management bank and issued voucher evidencing the same. The workman has requested to declare that the dismissal order issued by the management is illegal; unjust and to reinstate her in service with full back wages, continuity of service and all attendant benefits; to pay the arrears of wages and to pay compensation to her.

6. The averments in the written statement filed by the management in brief are as follows:-

The dispute raised at the instance of the individual workman is not sustainable either in law or on facts. The workman was never appointed by the bank through regular process of employment and no appointment letter was issued to her. There was no employer-employee relationship between the bank and the workman. The person involved in this reference will not come under the purview of "workman" as defined under Section 2(s) of the Industrial Disputes Act. Therefore, the dispute raised at her instance cannot be treated as an industrial dispute as defined under Section 2(k) of the Industrial Disputes Act, 1947.

7. The recruitment to the subordinate cadre in the bank is done through the medium of employment exchange and after following a proper selection process for those candidates who fulfill their eligibility criteria as per the guidelines issued by the bank from time to time. The workman has no right to claim regularization bypassing the guidelines for appointment issued by the bank.

8. The contention of the workman that she was employed as a sweeper at the Vazhakkad branch of the management bank, is false and incorrect. The sweeper of the Vazhakkad branch of the management bank retired from service on 31.01.2010. That vacancy was not filled up by the management bank immediately for the reason that proper procedure has to be complied before appointing a person in a permanent vacancy. Therefore the branch manager engaged several persons on temporary basis for the purpose of cleaning the branch premises. The workman was one among such persons engaged by the branch Manager. She had no continuous service under the management bank. She has not completed 240 days of continuous service under the management bank during the twelve months period as claimed by her. For the period 01.06.2011 to 31.05.2012 the workman was employed on casual basis for 189 days. The management bank has paid a sum of ₹10,773/- for the work done by her on casual basis.

9. The management is following the rules for appointment of part-time sweepers. As per the present procedure the qualification for appointment as part-time sweeper is:

"Educational Qualification : Maximum not passed 10th class/standard. There is no minimum qualification and even illiterates are eligible for appointment as PTS.

Age: Above 18 years and below 24 years as on the 1st day of January of the year if the vacancies are notified within 30th June and as on 1st July, if the vacancies are notified in the 2nd half of the calendar year."

10. The vacancy of part-time sweeper in the Vazhakkad branch of the management bank was filled up by transfer of Smt Bindu, who was formerly working at Vengara branch of the bank ever since 31.01.2004. Smt. Bindu joined the Vazhakkad branch on 01.06.2012. From that date and there is no vacancy for PTS at the Vazhakkad branch. Even if the workman has applied under the regular process of recruitment, her application would not have been considered for the reason that she was not having the required eligibility criteria specified above.

11. The mother-in-law of the workman was in the services of the management bank and she retired from service on 31.01.2010. Thereafter the management bank engaged several persons on casual and temporary basis till the permanent posting was done. From 01.06.2011 to 31.05.2012 the management bank engaged the workman for 189 days. Subsequently a permanent part-time sweeper was appointed and thereby the temporary engagement made by the bank for doing the sweeping work came to an automatic end.

12. The contention of the workman that she had uninterrupted and meritorious service under the management and her dedicated work was appreciated by the officials of the management bank, is false and incorrect. The contention of the workman that her services were terminated without any notice and without complying the procedural requirements is false and incorrect. The management has called upon the workman to prove all the averments in the claim statement. The services of the workman was discontinued after the posting of the new incumbent on regular basis. Therefore the management has requested to uphold their contentions and reject the claim of the workman.

13. After filing written statement by the management, the workman has not filed rejoinder even though opportunity was afforded to her. Thereafter the matter was posted for taking steps and for production of documents. Subsequently, as requested by the workman, as per the order in IA No.95/2014 the management was called upon to produce certain documents or file affidavit. As per the order in IA No.95/2014 the management produced the documents as requested by the workman.

14. Thereafter opportunity was afforded to the workman to adduce evidence to substantiate her plea. In spite of granting several adjournments the workman remained absent. Therefore she was set ex-parte. The documents produced by the management are marked as Exts.M1 series. Heard the learned counsel for the management.

15. The points arising for consideration are:

“(i) Whether the workman is entitled to be reinstated in service in the management bank as claimed by her?”

(ii) To what relief the workman is entitled to?”

16. **Point Nos.(i) & (ii):-** The workman involved in this reference, Smt. Divya P. V. has stated that she joined the services of the management bank at their Vazhakkad branch as a part-time sweeper in February, 2010. She would further state that she had uninterrupted and continuous service under the management bank till 31.05.2012. The workman has stated that on several occasions her dedicated work in the management bank was appreciated by the officials of the bank. She has stated that on 31.05.2012 the Manager of the Vazhakkad branch of the management bank informed that she has been terminated from the post of sweeper. According to the workman the denial of employment is illegal, unjust and against the principles of natural justice. She has stated that before terminating her from the services of the management bank no enquiry was conducted and no notice of termination was served on her. She has stated that she had more than 240 days' service under the management bank within a period of one year of her employment. She would further state that apart from the assigned duty as a sweeper she was asked to clean the ATM counter of the bank for about two months, for which she was paid @ ₹500/- per month. She has stated that she continued that special assignment for a further period of five months, for which no remuneration was paid to her.

17. The workman has stated that she received @ ₹57/- per day for the services rendered by her in the management bank, for which she has issued voucher evidencing the same. It is stated that from 01.02.2010 the workman was continuously employed under the management bank till she was terminated on 31.05.2012. According to the workman the decision of the management bank is illegal and against the fundamental rights guaranteed by the Constitution of India. She has sought for a declaration that the dismissal from service by the management is illegal, unjust and to reinstate her with full back wages, continuity of service and other attendant benefits.

18. The management has contended that the workman involved in this reference will not come under the purview of Section 2(s) of the Industrial Disputes Act and that the dispute raised cannot be treated as the one as defined under Section 2(k) of the ID Act. The management has stated that the workman was never appointed by the bank through regular process of employment and no appointment letter was issued to her. They have stated that there was no employer-employee relationship between the workman and the management bank. It is stated that the recruitment to the subordinate cadre in the bank is done through the employment exchange and after following the proper selection process for those candidates who fulfill the eligibility criteria as per the guidelines issued by the bank.

19. The management has stated that the sweeper employed at the Vazhakkad branch retired from service on 31.01.2010. The management could not fill up that vacancy as the procedure for appointment has to be complied before appointing any person in a permanent vacancy. Therefore the branch engaged persons on temporary basis for cleaning the bank premises. The management has stated that the workman never had continuous service of 240 days. It is stated that for the period from 01.06.2011 to 31.05.2012 the workman was engaged on casual basis for 189 days.

20. On behalf of the management Ext.M1 series are the documents marked. These are cash credit vouchers for the period from 02.03.2010 to 01.06.2012, maintained by the management bank evidencing payment of cleaning charges. Those documents reveal that apart from the workman herein, other persons were also engaged by the bank for doing the cleaning work in the bank. Even though the workman has claimed continuity of service from 01.02.2010 to 31.05.2012 under the management bank there is no acceptable evidence to prove the same. Ext.M1 series, marked on behalf of the management reveal that the management bank engaged other persons also for doing the cleaning work during the period from 02.03.2010 to 01.06.2012. Therefore, the workman involved in this reference cannot claim continuity of service under the management. It follows that the workman is not entitled to the relief claimed. Hence the points for consideration are answered against the workman.

21. In the result an award is passed holding that the workman is not entitled to any relief claimed as per this reference.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 09th day of September, 2016.

SASIDHARAN K., Presiding Officer

APPENDIX

Witness for the workman

NIL

Witness for the management

NIL

Exhibits for the workman

NIL

Exhibits for the management

M1	-	Credit cash voucher No.M-28551 dated 02.03.2010 for an amount of ₹1,653/- paid to Smt. Janaki as cleaning charges from 22.01.2010 to 28.02.2010 by the management branch.
M1(a)	-	Credit cash voucher No.M-232894 dated 31.03.2010 for an amount of ₹1,539/- paid as cleaning charges by the management branch.
M1(b)	-	Credit cash voucher No.M-20363 dated 03.05.2010 for an amount of ₹1,311/- paid to Smt. Mini as cleaning charges for 04/2010 by the management branch.
M1(c)	-	Credit cash voucher No.M-4004 dated 01.06.2010 for an amount of ₹1,425/- paid to Smt. Mini. P as cleaning charges for 05/2010 by the management branch.
M1(d)	-	Credit cash voucher No.M-5244 dated 01.07.2010 for an amount of ₹1,482/- paid as cleaning charges for 06/2010 by the management branch.
M1(e)	-	Credit cash voucher No.M-526780 dated 02.08.2010 for an amount of ₹1,539/- paid to Smt. Usha as cleaning charges for 07/2010 by the management branch.
M1(f)	-	Credit cash voucher No.M-49664 dated 01.09.2010 for an amount of ₹1,368/- paid as cleaning charges from for 08/2010 by the management branch.
M1(g)	-	Credit cash voucher No.M-706179 dated 01.10.2010 for an amount of ₹1,368/- paid to Smt. Usha as cleaning charges for 09/2010 by the management branch.
M1(h)	-	Credit cash voucher No.M-66561 dated 02.11.2010 for an amount of ₹1,311/- paid as daily wages for PTS by the management branch.
M1(i)	-	Credit cash voucher No.M-128830 dated 01.12.2010 for an amount of ₹1,368/- paid to Smt. Mini as cleaning charges for 11/2010 by the management branch.
M1(j)	-	Credit cash voucher No.M-80046 dated 03.01.2011 for an amount of ₹1,482/- paid to Smt. Mini as cleaning charges for 12/2010 by the management branch.
M1(k)	-	Credit cash voucher No.M-12782 dated 02.02.2011 for an amount of ₹1,425/- paid to Smt. Mini as cleaning charges for 01/2011 by the management branch.
M1(l)	-	Credit cash voucher No.M-339175 dated 01.03.2011 for an amount of ₹1,311/- paid to Smt. Mini as cleaning charges for 02/2011 by the management branch.

M1(m)	-	Credit cash voucher No.M-427095 dated 31.03.2011 for an amount of ₹1,482/- paid to Smt. Leela as cleaning charges for 03/2011 by the management branch.
M1(n)	-	Credit cash voucher No.M-170369 dated 02.05.2011 for an amount of ₹1,311/- paid to Smt. Mini as cleaning charges for 04/2011 by the management branch.
M1(o)	-	Credit cash voucher No.M-436934 dated 01.06.2011 for an amount of ₹1,482/- paid to Smt. Mini as cleaning charges by the management branch.
M1(p)	-	Credit cash voucher No.M-422552 dated 02.07.2011 for an amount of ₹1,482/- paid to Smt. Mini as cleaning charges by the management branch.
M1(q)	-	Credit cash voucher No.M-146198 dated 01.08.2011 for an amount of ₹1,425/- paid to Smt. Divya as cleaning charges for 07/2011 by the management branch.
M1(r)	-	Credit cash voucher No.M-273561 dated 01.09.2011 for an amount of ₹1,368/- paid to Smt. Divya as cleaning charges by the management branch.
M1(s)	-	Credit cash voucher No.M-735545 dated 01.10.2011 for an amount of ₹1,255/- paid to Smt. Leela as cleaning charges for 09/2011 by the management branch.
M1(t)	-	Credit cash voucher No.M-383335 dated 03.11.2011 for an amount of ₹1,311/- paid to Smt. Divya as cleaning charges by the management branch.
M1(u)	-	Credit cash voucher No.P-110839 dated 05.12.2011 for an amount of ₹1,425/- paid to Smt. Divya as cleaning charges by the management branch.
M1(v)	-	Credit cash voucher No.M-3531 dated 03.01.2012 for an amount of ₹1,539/- paid to Smt. Mini as cleaning charges for 12/2011 by the management branch.
M1(w)	-	Credit cash voucher No.P-5222 dated 06.02.2012 for an amount of ₹1,425/- paid to Smt. Divya as cleaning charges by the management branch.
M1(x)	-	Credit cash voucher No.P-114289 dated 02.03.2012 for an amount of ₹1,197/- paid to Smt. Divya as cleaning charges for 02/2012 by the management branch.
M1(y)	-	Credit cash voucher No.P-111391 dated 31.03.2012 for an amount of ₹1,482/- paid to Smt. Mini as cleaning charges for 02/2012 by the management branch.
M1(z)	-	Credit cash voucher No.P-727579 dated 30.04.2012 for an amount of ₹1,254/- paid as cleaning charges for 04/2012 by the management branch.
M1(aa)	-	Credit cash voucher No.P-94702 dated 01.06.2012 for an amount of ₹1,368/- paid as cleaning charges for 05/2012 by the management branch.

नई दिल्ली, 8 नवम्बर, 2016

का.आ. 2245.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलौर के पंचाट (संदर्भ सं. 37/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 08.11.2016 को प्राप्त हुआ था।

[सं. एल-12011/76/2015-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 8th November, 2016

S.O. 2245.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 37/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure in the Industrial Dispute between the management of Union Bank of India and their workmen, received by the Central Government on 08.11.2016.

[No. L-12011/76/2015-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE**DATED : 29th SEPTEMBER 2016**PRESENT : Shri V S RAVI, Presiding Officer****C R No. 37/2015****I Party**

The Joint Secretary,
Bank Employees Federation of India,
Karnataka, No.208, 1st Floor, 7th Cross,
Cubbonpet Main Road,
Bangalore-560002.

II Party

The General Manager (P & HR),
Union Bank of India, Central Office, 239,
Vidhan Bawan Marg, Nariman Point,
Mumbai - 400021

AWARD

1. The Central Government vide Order No.L-12011/76/2015– IR(B-II) dated 09.11.2015 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

SCHEDULE

“Whether workmen working in the posts carrying Special pay has to attend cash duty, in addition to their routine duties, or not under the 9th bipartite settlement?”

2. After the receipt of the reference, the matter has been registered on the file of this Tribunal and notices have been sent for both parties. Sh. B. M Madhavan, Joint Secretary of Bank employees Federation of India, Karnataka for First Party present and the Counsel for second Party also present.
3. On 29.09.2016, Sh. B. M Madhavan, Joint Secretary of Bank employees Federation of India, Karnataka for First Party filed Submission that the dispute of Sh. Venkatesh, an employee of the Union Bank of India against the Second Party Management and the said Sh. Venkatesh has availed Voluntary Retirement from Union Bank of India and he is not interest to continue the litigation and wanted to close the dispute. Therefore, First party has not submitted any Claim papers and requested to close the dispute.
4. Further, in the above mentioned submission filed by First Party on 29.09.2016, it is requested to permit the First Party Union to withdraw the above dispute raised in this reference. In view of the memo filed by Sh. B. M Madhavan, Joint Secretary of Bank employees Federation of India, Karnataka for First Party, the reference does not survive, for consideration and has to be closed, as withdrawn.
5. In the result, I pass the following Award.

AWARD

The Reference is rejected as withdrawn by the First Party Union.

(Dictated, transcribed, corrected and signed by me on 29th September, 2016)

V. S. RAVI, Presiding Officer

नई दिल्ली, 8 नवम्बर, 2016

का.आ. 2246.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन ओवरसीज बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ सं. 30/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 08.11.2016 को प्राप्त हुआ था।

[सं. एल-12012/86/2014-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 8th November, 2016

S.O. 2246.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 30/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of Indian Overseas Bank, Regional Office, Karumandapam, Trichy and their workmen, received by the Central Government on 08.11.2016.

[No. L-12012/86/2014-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM - LABOUR COURT, CHENNAI

Tuesday, the 18th October, 2016

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 30/2015

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Indian Overseas Bank and their workman)

BETWEEN :

Sri P. Thangaraj : 1st Party/Petitioner

AND

1. The Chief Manager : 2nd Party/1st Respondent
Indian Overseas Bank,
Regional Office
No. 4, Bharatidasan Salai
Cantonment
Trichy-620001
2. The Senior Manager : 2nd Party/2nd Respondent
Indian Overseas Bank, Karumandapam
Trichy

Appearance :

- For the 1st Party/Petitioner : M/s. K.M. Ramesh, Advocates
- For the 2nd Party/1st & 2nd Respondent : M/s. K.K. Sivashanmugham, Advocate

AWARD

The Central Government, Ministry of Labour and Employment vide its Order No. L-12012/86/2014-IR (B.II) dated 09.03.2015 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the demand of the workman Sri P. Thangaraj in seeking regularization as Messenger in Indian Overseas Bank is legal and justified? If so, to what relief the concerned workman is entitled?”

2. On receipt of the Industrial Dispute this Tribunal numbered it as ID 30/2015 and issued notices to both sides. Both sides entered appearance through their counsel and filed Claim and Counter Statement respectively.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner has studied upto 7th Standard. He was appointed as Temporary Messenger by the Respondent, Indian Overseas Bank after an oral interview and was posted in Trichy Main Branch on 02.08.1995. He had worked continuously without any break till 30.09.2003. The daily wages payable to the petitioner was marginally increased every year. In the year 2013 he was paid @ Rs. 150/- per day. The petitioner was discharging work of a perennial nature as Messenger. In spite of that he was retained as a temporary employee. From 01.10.2003 he was working at Karumandapam Branch, Trichy. The circular of the Bank dated 23.03.2011 stated that it has decided to absorb casual/temporary messengers/sweepers who have worked in any of the branches or offices in permanent vacancies and completed 240 or more days continuously, in a phased manner. The petitioner was made to affix his signature in an

application form intended to regularize his service. However, even after this he continued to be engaged as Temporary Messenger and paid wages every day. The petitioner orally demanded the Respondent to absorb him in service. Consequently, on 26.10.2014 the Branch Manager of Karumandapam Branch, Trichy orally informed the petitioner not to report for work from 27.10.2014 onwards. The dispute is raised accordingly. The action of the Respondent in terminating the service of the petitioner is violative of principles of natural justice and arbitrary. The petitioner had completed more than 240 days of continuous service in a period of 12 calendar months preceding the date of his termination. He had completed 480 days of continuous service in a period of 24 calendar months ever since 02.08.1993 and is to be deemed to have attained permanent status as per the Tamil Nadu industrial Establishment (Conferment of Permanent Status to Workman) Act. The Respondent did not comply with Section-25F of the Industrial Disputes Act while terminating the petitioner from service. The Respondent had been engaging new hands. So there is violation of Sections 25G and 25F of the Industrial Disputes Act. The petitioner is without any employment since 27.10.2014. An order may be passed directing the Respondent to reinstate the petitioner in service and to regularize him in service.

4. The Respondents have filed Counter Statement contending as below:

The Indian Overseas Bank has got a system of proper recruitment procedure for all the staffs. Some of the Branch Managers have engaged casual labour under exigencies like leave vacancy, sudden increase in work, etc. without following the recruitment procedure. The petitioner was temporarily engaged as casual labour. It was not based on proper selection process recognized by the Board of the Bank. The engagement of the petitioner is an irregular engagement without the support of proper selection process. The petitioner has no right to be absorbed or regularized in service. The Bank had entered into a settlement wherein it agreed to absorb the casual/temporary messenger/sweeper subject to certain conditions. A circular was issued consequent to the settlement. Pursuant to the circular the petitioner had submitted a declaration for absorption in bank service. He had declared that he had passed 7th Standard. As per the circular a candidate should have passed 8th Standard to be eligible for the post of Messenger. The petitioner was not continuously engaged at Karumandapam Branch. He was engaged only on leave vacancies. The petitioner was not absorbed as per the settlement dated 17.02.2011. Consequent to the non-absorption the petitioner was disengaged. This cannot be construed as retrenchment. Section-25F of the ID Act cannot be invoked in such a situation. The application of the petitioner for the post of Messenger was not considered as he does not have minimum educational qualification. Whether he worked continuously is to be verified. He was not continuously engaged at Karumandapam Branch. The petitioner is not entitled to any relief based on Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act also. The petition is liable to be dismissed.

5. The evidence in the case consists of oral evidence of WW1 and MW1 and documents marked as Ext.W1 to Ext.W25, Ext.M1 and Ext.M2 and C1 to C4.

6. **The points for consideration are:**

- (i) Whether the petitioner is entitled to be reinstated and regularized in service?
- (ii) What, if any if the relief to which the petitioner is entitled?

The Points

7. The petitioner has claimed that he has started to work with the Indian Overseas Bank from August, 1993 and had been continuously working until 26.10.2014 on which date he was orally terminated from service, According to the petitioner he had initially joined at Trichy Main Branch of the Bank as a Messenger and had worked there till 30.09.2003. According to him he had been working continuously at Trichy Main Branch. He was asked to work at Karumandapam Branch, Trichy from 01.10.2003 and thus he had started to work in this branch from this date. According to him he was continuously working in the Bank all along, starting from August 1993. In the meanwhile the Bank had entered into a settlement on 17.02.2011 regarding absorption of Messengers/Sweepers etc. who were working on temporary or casual basis and his application for absorption was obtained on the basis of the settlement also. He had later received a letter stating that his absorption will be considered only with prospective effect. Still there was no absorption but he had continued to work in the Bank until 26.10.2014

8. The petitioner had given evidence as WW1 to substantiate his case. Ext.M1 is the settlement entered into by the Bank with All India Overseas Bank Employees Union. Ext.M2 is the circular issued on the basis of Ext.M1. Ext.M22 comprises the letter by the Senior Manager of Karumandapam Branch to the Chief Manager of the Regional Office stating that he is forwarding the letter received from the petitioner. The annexure is an undertaking by the petitioner to the effect that he will not be claiming absorption retrospectively, that if his declaration regarding the period of his engagement is found false or any documents submitted by him in support of his age, qualification, etc are found bogus he would be liable to be terminated from service. The details of the engagement of the petitioner in the two different branches are also given in this annexure. It states that he had worked for 10 years from 02.08.1993 to 30.09.2003 at Trichy Main Branch and from 01.10.2003 at Karumandapam branch and was still working there as Messenger on 12.04.2011 on which date it is seen signed. There is also a certificate from the Branch Head to the effect that he was

engaged at Karumandapam Branch since 01.10.2003 and he had been engaged continuously for 240 days or more preceding 15.10.2010.

9. The case in the Counter Statement is that the petitioner has not been eligible as per the conditions provided in Ext.M1 settlement. The Counter Statement proceeds as if the application of the petitioner for absorption was for the post of Messenger and that this was not considered mainly because the petitioner did not have the educational qualification for the post of messenger. As per Ext.M1, the candidate should have passed 8th standard to be eligible for the post of Messenger. However, on going through Ext.W22 it could be seen that the petitioner had been asking for the post of Sweeper only for which he was qualified as per the conditions in Ext.M1. For the post of Sweeper one should have passed 5th standard and should not have passed 8th standard. Alongwith Ext.W22 the petitioner seems to have given the Record Sheet to show that he had studied upto 5th Standard. Ext.W25 is produced here to show that he did not pass 8th Standard. Ext.W25 is the copy of the Transfer Certificate showing that the petitioner was promoted to 8th Standard. This much is the qualification he is having and he was eligible to be absorbed in the post of Messenger if he had sufficient period of service as per Ext.M1 also.

10. The petitioner himself has produced Ext.W1 to Ext.W22, all salary vouchers showing payment of wages to him by the Bank. Ext.W1 is of the year 1993. Ext.W2 is of 1998 and Ext.W3 is of 1999. There is also Ext.W4 of 2004, Ext.W5 of 2009, Exts.W6, Ext.W7 and Ext.W8 of 2010 and Ext.W9 of 2013. The other salary vouchers are of different dates in the year 2014. As per Ext.M1, to be eligible for absorption the petitioner should have completed 240 or more days continuously in a calendar year as on 15.11.2010. Ext.W1 to Ext.W9 reveals only occasional payments and is not sufficient to prove his eligibility under Ext.M1. Of course, the question remains whether the petitioner who is having salary voucher from 1993 would have been working for the Bank just once in a blue moon.

11. The Bank has produced Ext.C1 to Ext.C4, the General Ledger Statements. I have been laboriously going through the entries of each day in the statement to find out on how many days the petitioner has worked. Unfortunately, it does not reveal anything much to support the petitioner. The payments made to him as per these are only occasional with long gap in between different dates. The payments are in very small amounts also making it impossible of any assumption that the payment was for several days together. I have been trying to find out for how many days the petitioner had worked in the 12 months in the calendar year prior to 15.11.2010 which is the cut-off date as per Ext.M1. Even these days are very minimum and nowhere near the 240 days required.

12. The petitioner has stated in the Claim Statement itself that even after he had received Ext.W23, the letter from the Chief Manager that absorption, if any will be only with prospective effect, the petitioner had been continuing in the Bank. Though there is only one wage voucher for the year 2013, he had produced several vouchers of the year 2014. Ext.W10 to Ext.W21 are such vouchers. This suggests continuous engagement of the petitioner in the Bank in 2014. His case in the Claim Statement as well as in evidence is that he was terminated from service on 26.10.2014. This statement is proved by Ext.W21, the voucher dated 25.10.2014 showing that he was there until this date.

13. The petitioner had filed IA 79/2016 before this Tribunal to direct the Respondent to produce the Muster Rolls, P&L Vouchers, etc. to prove his case. It was in response to this application Ext.C1 to Ext.C4 were produced by the Respondent. The petitioner had sought for the documents upto 2014. What the Respondent had stated in the Counter Statement is that Attendance Register will be available only for permanent employees. Then it is stated that the documents sought are voluminous and are confidential in nature. It is further stated that the vouchers will be preserved for only 8 years after which they would be destroyed. However, the petitioner has not produced the vouchers even within the period of 8 years. Definitely, the vouchers immediately prior to termination of the petitioner would have been available at the Bank. Even those are not produced. Ext.C1 to Ext.C4 are of the period from 02.01.2008 to 31.12.2011 only. The case of the petitioner is that he was working continuously upto 2014 in which case the GL Statements of the period after 31.12.2011 also were relevant. The failure of the Respondent to produce these documents call for an adverse inference.

14. Ext.C1 to Ext.C4 probably prove that the petitioner would not come within the eligibility criteria of Ext.M1 in the absence of continuous engagement for more than 240 days prior to the cut-off date. However, the case of the petitioner for reinstatement is not on the basis of Ext.M1 alone. He is harping his claim also on the fact that he was in continuous service at the time when he was disengaged and thus terminated by the Respondent. The petitioner has produced Ext.W9 to Ext.W21 the documents available with him to probabalise his case that he was continuously working with the Bank. The petitioner is only a casual employee who had been at the beck and call of the Bank for a long time. He having produced the entire evidence available with him, the burden has shifted upon the Respondent to prove that he was not working continuously before he was terminated from service. The Respondents have failed to discharge this burden. It is to be assumed that the petitioner had worked with the Bank for more than 240 days in the calendar year preceding the date of his termination.

15. The action of the Respondents in terminating the petitioner amounts to retrenchment. There is no case for the Respondents that any retrenchment notice or compensation in lieu of notice was given. This being the case the

petitioner is entitled to reinstatement even if not absorption, or compensation. The petitioner can opt for reinstatement or compensation.

16. In view of my discussion above, the Respondents are directed to reinstate the petitioner in his previous position and pay him wages equal to the minimum wages or pay him compensation of Rs. 3.00 lakhs, at his option. In either case the direction should be carried out within 2 months of the publication of the Award. If the petitioner opts for compensation and it is not paid within the stipulated period, the Respondent shall pay interest @ 7.5% from the date of the Award.

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 18th October, 2016)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : WW1, Sri P. Thangaraj
For the 2nd Party/1st and 2nd Management : MW1, Sri O.K. Ganesh

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ext.W1	21.08.1993	Salary Voucher showing daily wages paid to the petitioner
Ext.W2	19.12.1998	Salary Voucher showing daily wages paid to the petitioner
Ext.W3	06.04.1999	Salary Voucher showing daily wages paid to the petitioner
Ext.W4	01.06.2004	Salary Voucher showing daily wages paid to the petitioner
Ext.W5	03.10.1999	Salary Voucher showing daily wages paid to the petitioner
Ext.W6	03.10.1999	Salary Voucher showing daily wages paid to the petitioner
Ext.W7	03.01.2010	Salary Voucher showing daily wages paid to the petitioner
Ext.W8	22.05.2010	Salary Voucher showing daily wages paid to the petitioner
Ext.W9	20.12.2013	Salary Voucher showing daily wages paid to the petitioner
Ext.W10	12.02.2014	Salary Voucher showing daily wages paid to the petitioner
Ext.W11	05.04.2014	Salary Voucher showing daily wages paid to the petitioner
Ext.W12	22.05.2014	Salary Voucher showing daily wages paid to the petitioner
Ext.W13	21.06.2014	Salary Voucher showing daily wages paid to the petitioner
Ext.W14	03.07.2014	Salary Voucher showing daily wages paid to the petitioner
Ext.W15	08.08.2014	Salary Voucher showing daily wages paid to the petitioner
Ext.W16	01.09.2014	Salary Voucher showing daily wages paid to the petitioner
Ext.W17	20.09.2014	Salary Voucher showing daily wages paid to the petitioner
Ext.W18	01.10.2014	Salary Voucher showing daily wages paid to the petitioner
Ext.W19	20.10.2014	Salary Voucher showing daily wages paid to the petitioner
Ext.W20	21.10.2014	Salary Voucher showing daily wages paid to the petitioner
Ext.W21	25.10.2014	Salary Voucher showing daily wages paid to the petitioner
Ext.W22	-	Copy of letter from the Senior Manager, IOB to the Chief Manager, PAD, IOB, Regional Office, Trichy enclosing the application form of the petitioner
Ext.W23	21.04.2011	Copy of letter from the Chief Manager, IOB to the petitioner

Ext.W24	27.10.2014	Copy of letter from petitioner to the Assistant Labour Commissioner (Central), Chennai
Ext.W25	27.05.1993	Xerox copy of School Transfer Certificate issued by National College Higher Secondary School, Tiruchirapalli to the petitioner

On the Management's side

Ex.No.	Date	Description
Ext.M1	17.02.2011	Memorandum of Settlement under Section 12(3) of Industrial Disputes Act, 1947
Ext.M2	23.03.2011	Circular issued by Second Party Bank (Ref.No. EST/71/2010-11)

Core Documents on the Management's side

C.1	02.01.2008 to 31.12.2008	General Ledger Statement of Other Expenses of Karumandapam Branch
C.2	02.01.2009 to 31.12.2009	General Ledger Statement of Other Expenses of Karumandapam Branch
C.3	02.01.2010 to 31.12.2010	General Ledger Statement of Other Expenses of Karumandapam Branch
C.4	02.01.1998 to 31.12.2011	GL – 7451 – Wages – Temporary Messenger GL – 7452 – Wages – Temporary Messenger.

नई दिल्ली, 8 नवम्बर, 2016

का.आ. 2247.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आल इंडिया बैंक एसोसिएशन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलौर के पंचाट (संदर्भ सं. 14/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 08.11.2016 को प्राप्त हुआ था।

[सं. एल-12011/89/2012-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 8th November, 2016

S.O. 2247.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 14/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the Industrial Dispute between the management of All India Bank Association and their workmen, received by the Central Government on 08.11.2016.

[No. L-12011/89/2012-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE**DATED : 6th SEPTEMBER 2016**PRESENT : Shri V S RAVI, Presiding Officer****C R No. 14/2013****I Party**

The General Secretary,
All India Bank Deposit
Collectors Workmen Union(R),
772#1439, Renukacharya Temple Street,
KP Agrahar, Mysore.

II Party

The Chairman,
All India Bank Association,
World Trade Centre Complex Centre-1,
Mumbai-400005

AWARD

1. The Central Government vide Order No. L-12011/89/2012 – IR(B-II) dated 08.03.2013 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

SCHEDULE

“Whether the action of the management of All India Banks Association, Mumbai represented by its Chairman, Mumbai, in denying social security measures such as PF, Pension, Medical Aid, LF to the members of All Indian Deposit Collectors Association is legal and justified? What relief the said union is entitled to?”

2. After the receipt of the reference, the matter has been registered on the file of this Tribunal and notices have been sent for both parties. None appeared for the Ist party and Ist party also called absent for the served hearings. Infact, on 24.03.2014 and again, on 28.01.2015, notice of hearings have been sent to the I party by RPAD through the Department of Posts, India. Still, no representation has been made on behalf of I party and also, I party is called, absent, for several dates.

3. On perusal of records already on 10.05.2013 notice has been sent. However, the said Notice has been returned by the Indian Postal Department with an endorsement of “addressee not known”. Again on 24.03.2014, notice has been sent to I party by RPAD and the said RPAD cover also returned with endorsement as “Addressee left, hence, returned to sender”, by Indian Postal Department. Once again on 28.01.2015, RPAD notice has been sent to I party. Once again, the said RPAD cover also returned with an endorsement “addressee left and hence returned to sender”. In such circumstance it is found that inspite of giving sufficient and adequate chances, by issuing notices of hearing to I party, the I party has not made any appearance. Already, Vakalat filed for II party. In such circumstances, the matter is posted for passing Award after the perusal of entire records brought on record.

4. In the above mentioned circumstances, it would be very much clear in the present matter, that the I party has no interest to contest the present matter, inspite of sufficient opportunities and also inspite of issuing notices of hearing issued to the I party, from the year, 2013. It is for the I party to make out a case that first party is entitled to the above mentioned benefits and that the management has done a mistake by denying the said benefits. Further, on behalf of the II party Sh. H S Priyank for Sh. B C Prabhakar, Advocate, has appeared before this Tribunal and filed Vakalat on 28.06.2013 and also, reported that, as per the provisions of law, the relevant benefits have been granted by the II Party. Under the above mentioned special circumstances and peculiar facts, this Tribunal is constrained to pass appropriate award, after the perusal of material available on record.

5. Since no appearance has been made and also claim statement has not been filed and further no case has been made out by I party and the present reference has only to be rejected for non- prosecution. Therefore, keeping in view the conduct of I party in, not appearing before this Tribunal, even though thrice notices have been sent to the first party by way of RPAD and the conduct of First Party in not filing claim statement, in support of the said reference, it is crystal clear that the I party is no more interested in prosecuting the claim against II party. In the result and also in above mentioned facts and situations, it has to be held the present reference has to be rejected, for non prosecution and no useful purpose will be served in keeping the proceedings any more pending. Hence the following order.

ORDER

Reference is dismissed for non-prosecution.

(Dictated, transcribed, corrected and signed by me on 6th September, 2016)

V. S. RAVI, Presiding Officer

नई दिल्ली, 8 नवम्बर, 2016

का.आ. 2248.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुम्बई पोर्ट ट्रस्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ सं. 29/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 08.11.2016 को प्राप्त हुआ था।

[सं. एल-31011/4/2006-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 8th November, 2016

S.O. 2248.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 29/2007) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure in the Industrial Dispute between the management of Mumbai Port Trust and their workmen, received by the Central Government on 08.11.2016.

[No. L-31011/4/2006-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT : M.V. Deshpande, Presiding Officer

REFERENCE NO. CGIT-2/29 of 2007

EMPLOYERS IN RELATION TO THE MANAGEMENT OF MUMBAI PORT TRUST

The Chairman
Mumbai Port Trust
Port Bhavan,
Ballard Estate
Mumbai 400 038.

AND

THEIR WORKMEN

The General Secretary
Mumbai Port Trust Dock & General Employees Union
Port Trust Kamgar Sadan
Nawab Tank Road
Mazgaon,
Mumbai 400 010.

APPEARANCES:

FOR THE EMPLOYER : Mr. Umesh Nabar, Advocate

FOR THE WORKMEN : Mr. J. H. Sawant, Advocate.

Mumbai, dated the 10th August, 2016

AWARD

1. The Government of India, Ministry of Labour & Employment by its Order No.L-31011/4/2006 -IR (B-II) dated 05/07/2007 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the management of Mumbai Port Trust in not entering in its record the dates of appointments of Shri Vijay J. Parab, Cargo Supervisor (and Shri S.T.Mehta, Cargo Supervisor) as 02/06/1969 and not giving them all consequential benefits including the benefit to their age of retirement as 60 years is legal and justified? If not, to what relief these two workmen are entitled?”

2. After receipt of the Reference notices were issued to both the parties. In response to the notice the second party union filed its statement of claim at Ex-4. According to the second party the two workmen by name S/Shri Vijay J. Parab and S.T.Mehta were employed by Bombay Dock Labour Board as Tally and Sorting Clerks w.e.f. 02/06/1969. In due course they were promoted to the post of Dock Clerk and finally to the post of Cargo Supervisors. In 1994 Bombay Dock Labour Board transferred the services of the workmen to the first party and the first party became employer thereof. As per the Mumbai Port Trust circular dated 4/7/2000, the age of retirement of the second party workmen was 60 years. As they were recruited before 03/08/1972 the second party workmen are entitled to continue in their service upto the completion of their 60 years of age. However, the first party retired Shri Vijay Parab from the services w.e.f. 01/07/2007 i.e. on completion of 58 years of his age. They did not consider the period of his service from 2/6/1969 to 6/1/1979 and did not give benefit as per the circular dt. 4/7/2000 as done in the case of other workmen placed in similar circumstances. They ought to have allowed him to work up to 1/7/2009 till the age of 60 years with all consequential benefits. The first party gave discriminatory treatment to Mr. Parab and subjected to losses, hardship and inconvenience by forcibly retiring him w.e.f. 01/07/2007.

3. Mr. Mehta is still in service of MbPT. However first party has not yet entered in its record the date of his appointment as 02/06/1969. His service for the period 02/06/1969 to 28/02/1979 must be considered as service for first party for all purposes. The action of the first party in not considering the period of service of both the employees from 2/6/1969 is illegal. Retiring Shri Vijay Parab at the age of 58 as on 01/07/2007 is arbitrary and illegal and unjustified. Therefore the second party prays that the first party be directed to give all benefits to Vijay Parab till the age of his superannuation of 60 years treating as if he is not retired w.e.f. 1/7/2007. They also pray that action of the management in not entering the service of Mr. Mehta and not giving him benefits for the period of service from 2/6/1969 to 28/2/1979 be declared illegal.

4. The first party management resisted the statement of claim of the Union vide their written statement at Ex-5. According to the first party the contents in the statement of claim are false, contrary and inconsistent. According to them the contents in the statement of claim are misconceived, malafide and not maintainable in law and facts. They denied that second party union is deprived of any such right of the workmen. The second party workmen are demanding change of date of appointment and age of retirement which is contrary to the rules of the establishment. It would amount to injustice to similarly placed employees and showing favour to one set of employees in violation of principles of natural justice. According to the first party in the year 1979 post of Dock Clerk a higher grade than the grade in which the workmen were employed became available in stevedoring company. The said grade category of Docks clerk was not on the schedule of erstwhile BDLB. Considering the better prospects, the workman Shri Parab & Shri Mehta on their own volition choose to resign from the services of the erstwhile BDLB and take up the employment of Docks Clerk in the higher pay scale with the stevedoring company w.e.f. 07/01/1979 and 01/03/1979 respectively. After resigning from the erstwhile BDLB the workmen had collected all their terminal dues thereby settling all their claims against erstwhile BDLB in respect of their employment from 02/06/1969. Past service of erstwhile BDLB employees is not covered either by Government notification or by the subsequent settlements. Both the majority unions including the second party union were parties to the settlement. As both the workmen have resigned from the services of BDLB and joined the services of the first party, their period of service with BDLB cannot be considered. On the other hand they were recruited on 07/01/1979 and 01/03/1979 respectively. Therefore they cannot claim any benefit in respect of their previous service.

5. According to them the criteria was adopted by erstwhile BDLB in its meeting dated 11/07/1986 to fix the age of retirement in respect of Class-III and Class-IV employees recruited on or before 1972 as 60 years and for all future entrants the retirement age is 58 years. Birth date of Shri Parab is 16/06/1949 and as he joined the service on 07/01/1979, he was due for retirement at the age of superannuation of 58 years and was accordingly retired on 01/07/2007. Mr. Mehta joined the services of first party on 01/03/1979. Therefore, both these workmen are not entitled to get benefit of the retirement age of 60. They denied that workmen were subjected to discriminatory treatment, losses and hardship and inconvenience. Mr. Parab was accordingly retired lawfully at the age of 58. He also received all the retirement benefits. Therefore the first party submitted that the workmen are not entitled to any relief as prayed for. Therefore they pray that the reference be rejected with cost.

6. The second party filed their Rejoinder at Ex-10. They denied the contents in the Written Statement and reiterated their version in the Statement of Claim.

7. This Tribunal has passed Award on 17/06/2013. As per Award passed by the Tribunal the action of management in retiring workman Mr. V.J. Parab at the age of 58 years is declared unjust and improper. The management is directed to pay the workman Shri V.J. Parab compensation @ 20 % p.m. of his last pay (total emoluments) for the period of two years (24 months).

8. First party employer has filed Writ Petition No. 4544 of 2015 bearing Civil Writ Petition No. 4471 of 2015 before Hon'ble High Court Judicature at Bombay. The High Court remanded the Reference to this Tribunal for reconsideration in respect of aspect of back wages. As per Order of High Court in Writ Petition, only Clause 2 of the impugned Award is quashed and set aside and the Reference is restored to consider the aspect of back wages. The parties will be at liberty to file their pleadings and it is open to the Tribunal to permit the parties to lead evidence on the issue of back wages, if it feels necessary. So now the question for consideration is restricted to the aspect of back wages only after the Reference is remanded to this Tribunal.

9. Second party workman has filed Affidavit Ex-31. So also the first party management has adduced evidence of Mr. Ravindra Anant Sawant by filing his affidavit at Ex-32.

10. Following are the issues for my determination. I record my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1.	Whether Vijay J. Parab is entitled to the benefit of age of retirement as 60 years?	Yes
2.	What order?	As per order below.

REASONS**ISSUE No. 1**

11. In this respect, it is finding of the fact that workman Shri Parab is entitled to get the benefits of Circular dated 4/2/2000 by which the workmen of the first party recruited on or before 3/8/1972 are given benefit of retirement age up to 60 years and he ought not have been retired at the age of 58 years. It is finding of the fact that he is entitled to benefits of the age of retirement of age at 60 years. This finding has been confirmed by High Court and needs no reconsideration, since Part-I of the Order is not set aside. It is declared that the action of management in retiring of Mr. Parab at the age of 58 years is unjust and improper.

12. So far question of back wages is considered. Ld. Counsel for the workman submitted that in his evidence the workman has specifically stated that he was not gainfully employed in any establishment during the period from 1/7/2007 to 30/6/2009. He was pursuing his claim for his reinstatement in the services during the said period and then he was hopeful that the first party would withdraw its legal action and reinstate him in services with full back wages and all other consequential benefits. He was required to approach by filing Writ Petition No. 75 of 2007 praying for the directions to the Union of India to refer his Industrial dispute to Tribunal as provided under the I.D. Act, 1947. During the relevant period of 2 years he was not gainfully employed and not getting the same emoluments that he was entitled to receive in case of his employment with the First party during the said period.

13. In this respect there is no cross-examination on behalf of the management. This sort of evidence of the workman remains unshaken. Hence it can be considered that during the period of two years i.e. from 1/7/2007 to 30/6/2009, he was not gainfully employed in any establishment and that he was not getting the same emoluments, that he was entitled to receive in case of his employment with the First party during the said period. In view of that it can also be considered that in this respect there is specific pleading and evidence of workman Mr. Vijay Parab which has rather gone unchallenged.

14. Ld. Counsel for the management submitted that during the period of these two years workman Shri Parab was getting pension regularly. He also received the 20% of back wages for this period. He also received commuted pension amount Rs. 2,11,125/-. He also received gratuity amount of Rs. 2,51,866/-. So according to Ld. advocate for management workman is not entitled to back wages for the period of these two years.

15. In the context the hand can be laid on the decision in case of **Shobha Ram Raturi V/s. Haryana Vidyut Prasaran Nigam Limited 2016 1 CLR 228 SC**. In that case workman was denied back wages the Hon'ble Apex Court held that:

“After the order of retirement was set aside the Appellant-workman was entitled to consequential benefits. The fault lies with the respondents in not having utilized the services of the appellant for the period from 1/1/2003 to 31/12/2005. Had the appellant been allowed to continue in service, he would have readily discharged his duties. Having restrained him from rendering his services with effect from 1/1/2003 to 31/12/2005, the respondent cannot be allowed to press the self serving plea of denying him wages for the period in question, on the plea of the principle of “no work no pay”.

16. In view of this legal position it will have to be said that the second party workman is also entitled to full back wages especially when it is established that the workman was not gainfully employed anywhere during this period. At the most it can be considered that if necessary his retirement benefits shall be re-calculated by considering the pension amount and other amount which he received by way of compensation. I therefore hold that when the termination of Mr. Parab is held to be illegal and the first party management has not reinstated him in service then the first party management cannot deny his claim of back wages. Hence I hold that he is entitled to full back wages and other consequential benefits for the period of two years i.e. for twenty-four months. Accordingly above issues are answered as indicated against each of them.

17. In the result, I pass the following order:

ORDER

1. Reference is allowed.
2. The management is directed to pay full back wages and other consequential benefits to workman Shri V.J. Parab for the period of two years. His retirement benefits if necessary shall be re-calculated on the basis thereof and shall be released to him.
3. No order as to costs.

Date: 10.08.2016

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 8 नवम्बर, 2016

का.आ. 2249.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुम्बई पोर्ट ट्रस्ट के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ सं. 4/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.11.2016 को प्राप्त हुआ था।

[सं. एल-31011/8/2007-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 8th November, 2016

S.O. 2249.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 4/2008) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure in the Industrial Dispute between the management of Mumbai Port Trust and their workmen, received by the Central Government on 08.11.2016.

[No. L-31011/8/2007-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI****PRESENT :** M.V. Deshpande, Presiding Officer**REFERENCE NO. CGIT-2/4 of 2008****EMPLOYERS IN RELATION TO THE MANAGEMENT OF MUMBAI PORT TRUST**

The Chairman
Mumbai Port Trust
Port Bhavan, S.V. Marg
Ballard Estate
Mumbai-400 001.

AND**THEIR WORKMEN**

Shri Pramod Mankar
Nandini Co-op. Housing Society
34/A/003
Shivaji Nagar
Pokharan Road No.1
Thane (W).

APPEARANCES :

FOR THE EMPLOYER : Mr. Umesh Nabar, Advocate.

FOR THE WORKMAN : Mr. J. H. Sawant, Advocate.

Mumbai, dated the 19th August, 2016.**AWARD**

The Government of India, Ministry of Labour and Employment by its Order No.L-31011/8/2007-IR (B-II), dated 17.12.2007 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the management of Mumbai Port Trust in imposing the penalty of reduction of pension of Shri Pramod Bhimrao Mankar, Retired Assistant Shed Superintendent Docks to the minimum pension of Rs. 1850/- per month plus the admissible periodic relief vide order dated 31/01/2005 is legal and just? If not, to what relief the concerned workman is entitled?”

2. On receipt of the Reference, notices were issued to both the parties. In response to the notice, second party workman filed his statement of claim at Ex-7. According to the second party he had completed 22 years of service for the first party and he has been relieved from services by first party by way of voluntary retirement w.e.f. 01/03/2001. The workman was entitled to receive all the benefits including pension, gratuity etc. He was entitled to get pension @ 2,793/- w.e.f. 01/03/2001 and Rs.3,969/- w.e.f. 01/08/2003. The workman was paid the pension at the said rate belatedly. The Dy. Chairman of the first party by his order dt. 31/01/2005 imposed penalty by way of disciplinary action and reduced the pension of the workman to the minimum @ Rs.1,850/- p.m. plus admission periodical relief. The said order of Dy. Chairman is illegal, unjustified. The charge sheet was issued to the second party on the basis of charges leveled against him in the criminal case wherein the workman was acquitted by the court. The inquiry was not fair and proper as joint inquiry was initiated against the second party without any sanction of competent authority. There was violation of principles of natural justice. The findings of the Inquiry Officer are perverse. Thus no penalty can be imposed upon the second party. The penalty imposed was bad in law and not sustainable under the regulation. Therefore second party has raised industrial dispute. As the conciliation failed ALC (C) submitted his report to Labour Ministry. On his report the Labour Ministry sent the reference to this Tribunal. The workman therefore prays that the penalty of reduction of his pension to the minimum by order of Dy. Chairman be declared illegal, unjustified and the said order be set aside and first party be directed to pay full pension to the second party with arrears and interest thereon @ 18 % and the cost of the proceeding.

3. The first party resisted the statement of claim vide its written statement at Ex-8. They have denied all the allegations and contents of the second party in the statement of claim. According to them the claim of the second party is misconceived and not maintainable. The second party had intentionally violated the rules of discipline repeatedly. It amounts to total disregard in performing his duties. The workman was terminated for the act of misconduct under regulation no.3 (1) (IA) (i), (vii) (viii) (ix) & (xii) of the MbPT Employees (Conduct) Regulations, 1976 for his act of removing two imported white Land Cruiser Motor cars from imported containers by break opening seal and replacing new cars with old and junk cars in collusion and connivance with two others for which he was also charged and tried under Indian Penal Code. Domestic inquiry was initiated against him. The workman was given reasonable and proper opportunity to defend the charges leveled against him. The charges were found proved. On the basis of report of Inquiry Officer and findings therein the workman was held guilty. However considering his past service record lesser punishment of reduction of pension was imposed on the workman. The second party workman had obtained voluntary retirement on 01/03/2001 before the act of misconduct came into light. The action of the first party is legal and justified. Therefore the reference is not maintainable. They have denied all the contents in statement of claim and prayed that the reference be dismissed with cost.

4. The second party filed his rejoinder at Ex-9. He denied the contents in the written statement and reiterated that he was acquitted in the criminal case. Therefore the punishment imposed by the first party is illegal and unjustified.

5. This Tribunal has passed award on 2nd September, 2013 and allowed the Reference. As per award passed by the Tribunal punishment of withholding part of pension of the workman and reducing the pension to the minimum is set aside, and first party is directed to pay the arrears to the workman with interest thereon @9% p.a. from the date of the Reference till the date of payment of amount. In the said Award passed by the Tribunal it is finding of fact that inquiry is not fair and proper.

6. First party challenged the Award before Hon'ble High Court, Bombay in Writ Petition No. 1793 of 2015, the High Court has set aside the Award and remanded the Reference back for fresh consideration on the aspect of the authority who passed the order and factum of sanction by the Trustees. As per the Order of Hon'ble High Court in Writ Petition the scope of Inquiry of the Reference after the matter is remanded back to the Tribunal, will be restricted only to the aspect of Rules 7 and 8 of the Bombay Port Trust (Pension) Regulations.

7. Both the Parties have not adduced the evidence after Reference is remitted to this Tribunal.

8. I have heard the arguments advanced by Id. Advocate for the second party workman and perused notes of arguments Ex-35. I have also heard the arguments advanced by Id. Advocate for the First party.

9. Following are the issues for my determination. I record my findings thereon for the reasons to follow:

Sr. no.	Issues	Findings
1.	Whether the proceedings against Shri Pramod Bhimarao Mankar, Retired Assistant Shed Superintendent, Docks Department were initiated, conducted and concluded by the management of Mumbai Port Trust in accordance with the provisions made under 7 and 8 of the Bombay Port Trust Pension Regulations, 1965?	No
2.	Whether the punishment dated 31/1/2005 has been issued by the competent authority prescribed under the Bombay Port Trust Pension Regulations, 1965?	No

- | | | |
|----|---|---------------------|
| 3. | Whether the action of management of Mumbai Port Trust in imposing the penalty of reduction of pension of Shri P.B. Mankar, Retired Assistant Shed Superintendent, Docks Department to the minimum pension of Rs. 1850/- per month plus the admissible periodic relief vide order dated 31/1/2005 is legal and justified in the light of the Regulations 7 and 8 of the Bombay Port Trust Pension Regulations, 1965? | No |
| 4. | Whether Shri P.B. Mankar, Retired Assistant Shed Superintendent, Docks Department is entitled to the relief sought? | As per order below. |
| 5. | What order? | As per order below. |

REASONS

Issues nos.1& 2:-

10. In the case at hand legality of the inquiry was challenged on the following grounds: (1) the inquiry was initiated against the workman after his retirement and no such inquiry can be initiated against him after his retirement. (2) Joint inquiry was conducted without any sanction of the competent authority (3) there was violation of Principles of Natural Justice while conducting the inquiry. (4) The punishment was not imposed by the competent authority as prescribed under Bombay Port Trust Pension Regulations.

11. So far the scope of this Reference after remand is concerned, it is only to the extent of aspect of Rules 7 and 8 of the Bombay Port Trust (Pension) Regulations. Rule 7 of Bombay Port Trust (Pension) Regulations reads as under

Rule 7 -(1) Good conduct shall be an implied condition of every grant of pension. The Trustees may, by order in writing, withhold or withdraw a pension or part thereof whether permanently or for a specified period, if he (pensioner) is convicted of a serious crime or is found guilty of grave misconduct.

(2) Where a pensioner is convicted of a serious crime by a Court of Law, action under sub-regulation (1) shall be taken in the light of judgment of the Court relating to such conviction.

(3) In a case not falling under sub-regulation (2), if the Trustees consider that the pensioner is prima-facie guilty of grave misconduct, they shall before passing an order under sub-regulation (1)-

(a) Serve upon the pensioner a notice specifying the action proposed to be taken against him and the ground on which it is proposed to be taken and calling upon him to submit within fifteen days of the receipt of the notice or such further time, not exceeding fifteen days, as may be allowed by the Trustees such representation as he may wish to make against the proposal; and

(b) take the representation, if any, submitted by the pensioner under clause (a) into consideration.

12. Regulation 8 reads as under:

The Trustees further reserve the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to the Trustees or if in departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement:

Provided that ----

(a) Such departmental proceedings, if instituted while the employee was in services, whether before his retirement or during his re-employment, shall, after the final retirement of the employee, be deemed to be proceeding under this regulation and shall be continued and concluded by the authority by which it was commenced in the same manner as if the employee had continued in service;

(b) Such departmental proceedings, if not instituted while the employee was in service, whether before his retirement or during his re-employment—

(I) shall not be institute save with the sanction of the Trustees;

(II) Shall not be in respect of any event which took place more than four years before such institution; and

(III) Shall be conducted by such authority and in such place as the Trustees may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the employee during his service;

- (c) No such judicial proceedings if not instituted while the employee was in service whether before retirement or during his re-employment, shall be instituted in-respect of a course of action which arose or an event which took place more than four years before such institution.

13. In view of above provisions, it is clear that in case the inquiry was initiated after retirement of workman. Such a departmental inquiry can very well be initiated with the sanction of Trustee as contemplated under Rule 8 (b) (I) of Bombay Port Trust Pension Regulations. In the instant case since the inquiry was initiated within four years from the date of alleged misconduct. It can very well be said that though the inquiry was initiated after retirement of workman such inquiry can be initiated against him even after the retirement in respect of the incident which took place more than four years as contemplated under Rule 8 b (II) of Bombay Port Trust (pension) Regulations. So now the only question is whether first party has initiated the inquiry as per the Regulations and Rules 7 and 8 of Bombay Port Trust Pension Regulations.

14. It is matter of record that the meeting of board of Trustee of Mumbai Port Trust was held on 26/12/2001 and the Resolution was passed bearing Resolution No. 204 where by the approval is recorded to initiate the departmental inquiry against Mr. P.B. Mankar, Ex-Assistant as proposed in Para 6 of the note. Even the letter dated 1/1/2002 reveals that there was mere approval by the Board to initiate disciplinary proceedings against second party and thereafter the Charge Sheet was issued by the Disciplinary Authority and an Inquiry officer was appointed by the Disciplinary Authority. Memorandum of Charge Sheet dated 26/2/2002 was issued by Traffic Manager and Disciplinary Authority. The show cause memo was also issued by Traffic Manager and Disciplinary Authority.

15. Ld. Counsel for the second party workman submitted that the inquiry was not initiated as per the regulation and the Trustee have not given a specific sanction nor has given show cause notice before imposition of punishment. Submission is to the effect that the Deputy Chairman of first party who acted as Disciplinary Authority passed the order dated 31/1/2005 imposing the punishment of reduction of pension to the minimum pension of 1850 per-month plus admissible periodic relief. Submission therefore is that punishment order dated 31/1/2005 has not been issued by the Authority prescribed under Bombay Port Trust Pension Regulations 1965.

16. Ld. Counsel for the second party workman seeks to rely on decision in case of **Herapada Das V/s. Calcutta Port Trust & Ors. 2011(III) CLR 792**, in that case pensionary benefits of the retired employee was withdrawn by an order passed by Financial Advisor and Chief Accounts Officer. The Hon'ble Court in that case held that said officer was not competent to pass the said order. It was exclusive jurisdiction to be exercised by the Chairman. Therefore Hon'ble High Court held that the impugned order passed by Financial Advisor and Chief Accounts Officer being without jurisdiction is a nullity.

17. In the instance case it appears that proposal had been given for disciplinary action against P. V. Mankar and Resolution was passed bearing Resolution No 204 where by the approval is recorded to initiate the disciplinary proceedings against P.B. Mankar, Ex-Assistant as proposed in Para 6 of the note. In fact as per the requirement of Regulation 8 (b) (I) the sanction of Trustees is required. For exercise the power by the Trustees what is required is that they should clearly record its reasons, in the order itself for exercising such a power. Application of mind by such authority at that point of time could only be revealed when order recorded its reasons. It appears that merely approval to the proposal is given without subjective satisfaction of authority. Such subjective satisfaction is not reflected in the said sanction. Merely approval of the proposal does not amount to the compliance with the requirement of Sec 8(b)(I) of Bombay Port Trust Pension Regulations.

18. Even it appears that the Traffic Officer has issued the Memorandum statement of articles, statement of imputations. The traffic manager has passed the order and withheld the part amount of pension of the workman as disciplinary authority. As per Rule 8 "The Trustee reserved the right of withholding of pension or any part of it whether permanently or for a specific period." It indicates that the power is with the Trustees to withhold or withdraw the pension or any part of it. As per Rule 8, only Trustees can withhold the pension or part thereof and the order passed by Traffic Manager withholding part of pension is null and void. It can be said therefore the order was not passed by the competent authority.

19. As such it can be said that proceedings against the workman Shri Pramod Bhimrao Mankar, Retired Assistant Shed Superintendent, Docks Department were not initiated, conducted and concluded by the management of Mumbai Port Trust, in accordance with the provisions made under Rules, 7 and 8 of the Bombay Port Trust Pension Regulations, 1965. Consequently I hold that order of punishment dated 31/1/2005 has not been issued by competent authority prescribed under the Bombay Port Trust Pension Regulations, 1965. Issues No. 1 and 2 are answered accordingly as indicated against each of them.

ISSUE Nos. 3 and 4:

20. In the light of above discussions specially the findings on issue No.1 and 2. I come to the conclusion that, the punishment of withholding part of pension imposed upon the workman by Traffic Manager was without jurisdiction.

21. Even the sanction given by the Board /Trustee does not amount to the compliance with the requirement of Sec 8 (b) (I) of Bombay Port Trust Pension Regulations. Issues No. 3 and 4 are decided accordingly.

22. In the result, I pass the following order.

ORDER

- (i) The reference is allowed with no order as to cost.
- (ii) The punishment of withholding part of pension of the workman and reducing the pension to the minimum is hereby set aside.
- (iii) The first party is directed to pay the arrears to the workman with interest thereon @ 9 % p.a. from the date of the reference till the date of payment of the amount.

Date: 19.08.2016

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 8 नवम्बर, 2016

का.आ. 2250.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुम्बई पोर्ट ट्रस्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ सं. 23/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.11.2016 को प्राप्त हुआ था।

[सं. एल-31011/3/2006-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 8th November, 2016

S.O. 2250.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 23/2007) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure in the Industrial Dispute between the management of Mumbai Port Trust and their workmen, received by the Central Government on 08.11.2016.

[No. L-31011/3/2006-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT : M.V. Deshpande, Presiding Officer

REFERENCE NO. CGIT-2/23 of 2007

EMPLOYERS IN RELATION TO THE MANAGEMENT OF MUMBAI PORT TRUST

The Chairman
Mumbai Port Trust
Port Bhavan,
Ballard Estate
Mumbai-400 038.

AND

THEIR WORKMEN

The General Secretary
Mumbai Port Trust Dock &
General Employees' Union
Port Trust Kamgar Sadan
Nawab Tank Road
Mazgaon,
Mumbai-400 010.

APPEARANCES:

FOR THE EMPLOYER : Mr. Umesh Nabar, Advocate

FOR THE WORKMEN : Mr. J. H. Sawant, Advocate

Mumbai, dated the 10th August, 2016

AWARD

1. The Government of India, Ministry of Labour & Employment by its Order No.L-31011/3/2006 -IR (B-II) dated 11/06/2007 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the management of Mumbai Port Trust in retiring the workman Shri P.L.Kumthekar from the services w.e.f. 01.03.2005 after attaining the age of 58 years is just and legal? If not, to what relief the concerned workman is entitled?”

2. After receipt of the Reference, notices were issued to both the parties. In response to the notice the second party union filed its statement of claim at Ex-4. According to the second party the workman was employed by Bombay Dock Labour Board as Tally and Sorting Clerk w.e.f. 02/06/1969. He worked continuously up to 28/2/1979. The Bombay Stevedoring Association, administrative body of BDLB promoted the second party to the post of Dock Clerk and allotted him to join the services in M/s. D.C.Cooper & Co. w.e.f. 1/3/1979. It is contended that in pursuance of the Bombay Dock Workers (Regulation of Employment) Amendment Scheme, 1981 the second party was registered under the said scheme w.e.f. 23/1/1981. In 1994 Bombay Dock Labour Board transferred the services of the workman to the first party and the first party became employer thereof. The age of retirement of the second party workman was 60 years as per the Mumbai Port Trust circular dated 4/7/2000. The second party workman is entitled to continue in service till completion of his 60 years of age as they were recruited before 3/8/1972. However, the first party retired second party workman from the services w.e.f. 1/3/2005 i.e. on completion of 58 years of his age. They did not consider the period of his service from 2/6/1969 to 28/02/1979 and did not give benefit as per the circular dt. 4/7/2000 as done in the case of other workmen placed in similar circumstances. They ought to have allowed him to work up to 1/7/2007 till the age of 60 years with all consequential benefits. The first party gave discriminatory treatment to Shri Kumthekar and subjected to losses, hardship and inconvenience by forcibly retiring him w.e.f. 1/3/2005.

3. The action of the first party in not considering the period of service of the second party workman from 2/6/1969 is illegal. Retiring Shri P.L.Kumthekar at the age of 58 as on 01/03/2005 is arbitrary and illegal and unjustified. Therefore the second party prays that the first party be directed to give all benefits to Workman Shri P.L.Kumthekar till the age of his superannuation of 60 years treating as if he is not retired w.e.f. 1/3/2005.

4. The first party management resisted the statement of claim of the Union vide their written statement at Ex-6. According to the first party the contents in the statement of claim are false, contrary and inconsistent. According to them the contents in the statement of claim are misconceived, malafide and not maintainable in law and facts. They denied that second party union is deprived of any such right of the workman. The second party workman is demanding change of date of appointment and age of retirement which is contrary to the rules of the establishment. It would amount to injustice to similarly placed employees and showing favour to one set of employees in violation of principles of natural justice. According to the first party in the year 1979 post of Dock Clerk a higher grade than the grade in which the workmen were employed became available in stevedoring company. The said grade category of Docks Clerk was not on the schedule of erstwhile BDLB. Considering the better prospects the workman on his own volition choose to resign from the services of the erstwhile BDLB and take up the employment of Docks Clerk in the higher pay scale with the stevedoring company w.e.f. 25/01/1979. After resigning from the erstwhile BDLB the workman had collected all his terminal dues thereby settling all their claims against erstwhile BDLB in respect of his employment from 02/06/1969. Absorption of erstwhile BDLB employees is not covered either by Government notification or by the subsequent settlements. Both the majority unions including the second party union were parties to the settlement. As the workman has resigned from the services of BDLB and joined the services of the first party their period of service with BDLB cannot be considered. On the other hand he was recruited on 01/03/1994. Therefore he cannot claim any benefit in respect of his previous service.

5. According to the first party the criteria was adopted by erstwhile BDLB in its meeting dated 11/07/1986 to fix the age of retirement in respect of Class-III and Class-IV employees recruited on or before 1972 is 60 years and for all future entrants the retirement age is 58 years. Birth date of workman is 01/03/1947 and as he joined the service on 25/01/1979 he was due for retirement at the age of superannuation of 58 years and was accordingly retired on 28/02/2005. They denied that workman was subjected to discriminatory treatment, losses and hardship and inconvenience. Workman was accordingly retired lawfully at the age of 58. He also received all the retirement benefits. Therefore the first party submitted that the workman is not entitled to any relief as prayed for. Therefore they pray that the Reference be rejected with cost.

6. The second party filed their Rejoinder at Ex-9. They denied the contents in the Written Statement and reiterated their version in the Statement of Claim.

7. This Tribunal has passed Award on 17/06/2013. As per Award passed by the Tribunal the action of management in retiring workman Mr. P.L. Kumthekara the age of 58 years is declared unjust and improper. The management is directed to pay the workman Mr. P.L. Kumthekar compensation @ 20 % p.m. of his last pay (total emoluments) for the period of two years (24 months).

8. First party employer has filed Writ Petition No. 4544 of 2015 with Civil Writ Petition No. 4471 of 2015 before Hon'ble High Court Judicature at Bombay. The High Court remanded the Reference to this Tribunal for reconsideration in respect of aspect of back wages. As per Order of High Court in Writ Petition, only Clause 2 of the impugned Award is quashed and set aside and the Reference is restored to consider the aspect of back wages. The parties will be at liberty to file their pleadings and it is open to the Tribunal to permit the parties to lead evidence on the issue of back wages, if it feels necessary. So now the question for consideration is restricted to the aspect of back wages only after the Reference is remanded to this Tribunal.

9. Second party workman has filed Affidavit Ex-34. So also the first party management has adduced evidence of Mr. Ravindra Anant Sawant by filing his affidavit at Ex-35.

10. Following are the issues for my determination. I record my findings thereon for the reasons to follow:

Sr. no.	Issues	Findings
1.	Whether 2 nd Party is entitled to continue in the service up to 28/7/2007 i.e. till he completes his 60 years?	Yes
2.	What order?	As per order below.

REASONS

ISSUE No. 1

11. In this respect, it is finding of the fact that workman Mr. P.L. Kumthekaris entitled to get the benefits of Circular dated 4/2/2000 by which the workmen of the first party recruited on or before 3/8/1972 are given benefit of retirement age up to 60 years and he ought not have been retired at the age of 58 years. It is finding of the fact that he is entitled to the benefits of the age of retirement of age at 60 years. This finding has been confirmed by High Court and needs no reconsideration, since Part-I of the Order is not set aside. It is declared that the action of management in retiring of Mr. P.L. Kumthekar at the age of 58 years is unjust and improper.

12. So far question of back wages is considered Ld. Counsel for the workman submitted that in his evidence the workman has specifically stated that he was not gainfully employed in any establishment during the period from 1/3/2005 to 28/2/2007. He was pursuing his claim for his reinstatement in the services during the said period and then he was hopeful that the first party would withdraw its legal action and reinstate him in services with full back wages and all other consequential benefits. He was required to approach Hon'ble High Court by filing Writ Petition No. 3145 of 2006 praying for the directions to the Union of India to refer this industrial dispute to Tribunal as provided under the I.D. Act, 1947. During the relevant period of 2 years he was not gainfully employed and not getting the same emoluments that he was entitled to receive in case of his employment with the First party during the said period.

13. In this respect there is no cross-examination on behalf of the management. This sort of evidence of the workman remains unshaken. Hence it can be considered that during the period of two years i.e. from 1/3/2005 to 28/2/2007, he was not gainfully employed in any establishment and that he was not getting the same emoluments, that he was entitled to receive in case of his employment with the First party during the said period. In view of that it can also be considered that in this respect there is specific pleading and evidence of workman Mr. P.L. Kumthekar which has rather gone unchallenged.

14. Ld. Counsel for the management submitted that during the period of these two years workman Mr. P.L. Kumthekar was getting pension regularly. He also received the 20% of back wages for this period. He also received commuted pension amount Rs. 1,38,762/- in April or May 2005. He also received gratuity amount of Rs. 1,90,843/-. So according to Ld. Advocate Mr. Umesh Nabar for management, workman is not entitled to back wages for the period of these two years.

15. In the context the hand can be laid on the decision in case of **Shobha Ram Raturi V/s. Haryana Vidyut Prasaran Nigam limited 2016 I CLR 228 SC**. In that case;

“Workman was denied back wages the Hon'ble Apex Court held that after the order of retirement was set aside the Appellant-workman was entitled to consequential benefits. The fault lies with the respondents in not having utilized the services of the appellant for the period from 1/1/2003 to 31/12/2005. Had the appellant been allowed to continue in service, he would have readily discharged his duties. Having restrained him from rendering his services with effect from 1/1/2003 to 31/12/2005, the respondent cannot be allowed to press the

self serving plea of denying him wages for the period in question, on the plea of the principle of “no work no pay”.

16. In view of this legal position it will have to be said that the second party workman is also entitled to full back wages especially when it is established that the workman was not gainfully employed anywhere during this period. At the most it can be considered that if necessary his retirement benefits shall be re-calculated by considering the pension amount and other amount which he received by way of compensation. I therefore hold that when the termination of Mr. P.L. Kumthekar is held to be illegal and the first party management has not reinstated him in service then the first party management cannot deny his claim of back wages. Hence I hold that he is entitled to full back wages and other consequential benefits for the period of two years i.e. for twenty-four months. Accordingly above issues are answered as indicated against each of them.

17. In the result, I pass following order:

ORDER

1. Reference is allowed.
2. The management is directed to pay full back wages and other consequential benefits to workman Mr. P.L. Kumthekar for the period of two years. His retirement benefits if necessary shall be re-calculated on the basis thereof and shall be released to him.
3. No order as to costs.

Date: 10.08.2016

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 8 नवम्बर, 2016

का.आ. 2251.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सैन्ट्रल बैंक ऑफ इंडिया के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चंडीगढ़ के पंचाट (संदर्भ सं. 726/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.11.2016 को प्राप्त हुआ था।

[सं. एल-12012/136/2000-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 8th November, 2016

S.O. 2251.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 726/2005) of the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh as shown in the Annexure in the Industrial Dispute between the management of Central Bank of India and their workmen, received by the Central Government on 08.11.2016.

[No. L-12012/136/2000-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sri Kewal Krishan, Presiding Officer

ID No. 726/2005

Registered on 01.09.2005

Sh. Sanjay Kumar, S/o Sh. Malkhan Singh,
R/o H.No.702/31, Bapu Dham Colony, Sector-26,
Chandigarh

...Applicant

Versus

1. The Zonal Manager, Central Bank of India,
Sector 17B, Chandigarh.

2. The Manager, Central Bank of India,
Branch Office, Sector 22C, Chandigarh

...Respondents

APPEARANCES :

For the workman	-	Sh. D.R. Kaith, Adv.
For the management	-	Sh. D.K. Gupta, Adv.

AWARD

Passed on : 09.08.2016

Vide Order No.L-12012/136/2000-IR(B-II), dated 22.08.2000 the Central Government in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of Central Bank of India in terminating the services of Sh. Sanjay Kumar S/o Sh. Malkhan Singh w.e.f. March, 1995 without complying the provisions of ID Act is legal and just? If not, what relief the concerned workman is entitled to and from which date?”

In response to the notice, workman submitted statement of claim, pleading that he was appointed as Sweeper-cum-Peon by the respondent-management and was posted at Extension Counter, Zirakpur, where he continuously worker upto March 1995. Initially he was paid Rs.400/- per month which was subsequently increased to Rs.750/- per month. That Mr. Duggal, who joined as Manager, wanted to adjust his man and the services of the workman were terminated.

It is further pleaded that as per policy decision of the respondent-bank, the workman who has completed 240 days of service, his services are be regularized. The Zonal Office wrote a letter to the Branch Office on 13.09.1995, seeking information regarding the services of the workman and respondent No.2 sent a letter on 10.10.1995, admitting that workman completed more than 240 days of service. But the workman was not reinstated in service.

Since his termination is in violation of Section 25-F and 25-H of the Act and is bad and he be reinstated in service with full back wages.

The respondent-management filed reply, controverting the averments and denied that the workman was ever appointed or selected as Sweeper-cum-Peon. That he was engaged as a labourer on few occasions for which he was paid. The alleged letters are just issued to help the workman.

Parties were given opportunity to lead the evidence.

In support of his case, Sh. Sanjay Kumar, workman appeared in the witness-box and filed his affidavit, reiterating the stand taken by him in his statement of claim. He also examined Sh. P.P. Singh, who was posted as Branch Manager, in 1995 and deposed that the workman used to work with the bank as casual worker sometime. He did not admit his signatures on the letter dated 10.10.1995, Mark B and deposed that he could not tell whether the said letter bear his signature.

On the other hand, respondent-management has examined Sh. Yashpal Dhiman, who filed his affidavit, reiterating the stand taken by the respondent-management.

I have heard Sh. D.R. Kaith for the workman and Sh. D.K. Gupta for the management and perused the file.

The learned counsel for the workman relied on the letter Mark-B dated 10.10.1995 and Mark-A dated 13.09.1995 and submitted that the respondent-bank itself admitted that the workman worked for more than 240 days and further submitted that if the appointment of the workman was not in accordance of the rules, the official cannot be terminated and further submitted that the respondent-bank did not produce the record and therefore, adverse inference be drawn that workman actually worked with the respondent-bank.

I have considered the contention of the learned counsel.

The workman has pleaded in Para-1 of the statement of claim that he was selected and appointed as Sweeper-cum-Peon by the respondent-management and continuously worked upto March 1995. He did not state the date and year on which he was so appointed and again did not produce any appointment letter in this respect. The respondent-bank is a statutory body, having its rules and regulations for giving appointment. But there is nothing on the file to show that any such rule was followed while selecting and appointing the workman as Peon. Thus, it cannot be said that the workman was appointed or selected by the respondent-bank. Again there is nothing on the file to suggest that he ever received any salary from the bank and in the absence of this, it cannot be said that he worked as a Peon with the respondent-bank.

The workman summoned the record relating to letter dated 28.08.1995 whereby information was sought about the services of the workman; a letter dated 10.10.1995 Mark-B, which was allegedly written by Sh. P.P. Singh, mentioning therein that the workman continuously worked for more than 240 days from April 1993 to March 1995.

The respondent-management filed affidavit of Sh. M.L. Jain, its Manager, whereof he deposed that no such letters exists in the record. Thereafter, workman sought permission to prove the said letters by leading secondary evidence, which was allowed, vide order dated 14.04.1995. The workman did not prove the said letters by leading any evidence. He produced the said letters when appeared in the Court and it cannot be said that his statement prove the said documents. Sh. P.P. Singh, who according to the workman wrote the letter dated 10.10.1995, did not admit his signatures on the said letters and no effort was made to get his specimen signatures compared with the signatures found on the letter dated 10.10.1995 Mark-B. Even no suggestion was put to him that the said letter actually bears his signature. Thus, it cannot be said that the said letter is proved on the file, establishing that the workman actually worked during the year 1993-1995 much less in the absence of proof of any salary received from the respondent-bank. Thus, both the said letters regarding the service of the workman, which are not proved, do not help the workman in any way, and no reliance can be placed on the said letters to hold that the workman actually worked with the respondent-bank. In these circumstances, the arguments raised by the learned counsel that the service of the workman cannot be terminated even if his appointment is not in accordance with the rules or adverse inference be drawn against the management are of no force as it is not proved that the workman was ever appointed by the respondent-bank.

In result, it is held that the workman has failed to prove that he was appointed by the respondent-bank as Sweeper-cum-Peon and therefore, the question of terminating his services w.e.f. March 1995, do not arise and he is not entitled to any relief and the reference is answered accordingly.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 8 नवम्बर, 2016

का.आ. 2252.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ सं. 90/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.11.2016 को प्राप्त हुआ था।

[सं. एल-12011/70/2014-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 8th November, 2016

S.O. 2252.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 90/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of Union Bank of India, Nodal Regional Office and their workmen, received by the Central Government on 08.11.2016.

[No. L-12011/70/2014-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Friday, the 30th September, 2016

Present : K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 90/2014

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Union Bank of India and their workman)

BETWEEN :

The General Secretary
Union Bank Employees Union
Singapore Plaza, III Floor, 164, Linghi Chetty Street
Chennai

: 1st Party/Petitioner Union

AND

The Deputy General Manager : 2nd Party/Respondent
 Union Bank of India (Nodal Regional Office)
 139, Broadway
 Chennai-600108

Appearance:

For the 1st Party/Petitioner : M/s. K.M. Ramesh, Advocates
 For the 2nd Party/Respondent : M/s. T.S. Gopalan & Co., Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12011/70/2014-IR (B.II) dated 10.10.2014 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

“Whether the action of the Management of Union Bank of India, Chennai in terminating the services of Sri V. Sampath Kumar as claimed by Union Bank Employees Union is legal and justified? What relief the workman/Union is entitled to?”

2. On receipt of the Industrial Dispute this Tribunal numbered it as ID 90/2014 and issued notices to both sides. Both sides entered appearance through their counsel and filed Claim and Counter Statement respectively.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner is a registered union and represents a substantial number of Clerical and other staff employed in the Respondent Bank. Sampath Kumar who is the workman concerned in the case, joined the service of the Respondent Bank as House Keeper and was subsequently promoted as Peon. He had put in 8 years service. During the year 2013 he was issued with a Charge Sheet for certain commissions and omissions, while working at Gudalur Branch. In the enquiry that was held the concerned workman admitted the guilt of unauthorized absence and pleaded for leniency. The Disciplinary Authority which accepted the findings of the Enquiry Officer imposed the punishment of dismissal from service on the concerned workman. Though an appeal was preferred it was dismissed by the Appellate Authority. The Respondent did not properly consider the explanation given by the workman or the documentary evidence available on record. The action of the Respondent in dismissing the concerned workman from service is without justification. The dispute is raised accordingly. An award may be passed holding that the action of the Respondent in dismissing the workman from service is not justified and also directing the Respondent to reinstate him in service with backwages and other attendant benefits.

4. The Respondent has filed Counter Statement contending as below:

The concerned workman had joined the Respondent Bank as a Part-Time Sweeper in 2005. In 2011 the Part-Time Sweepers were upgraded as House Keeper-cum-Peon as a one-time exercise. The job of this post involved attending the movement of registers, cash book handling, stitching work, etc. apart from cleaning the toilets and sweeping the premises.. He was required to attend the job of a Sub-Staff also. The concerned workman was alcoholic and was in the habit of chewing tobacco. There were several instances which show that he was not fit to continue in service. Several memos were issued against him while he was working at Coonoor Branch. In 2012 he was posted at Gudalur in Nilgiris District on the basis of his representation. Here also there were several complaints against him regarding his behavior as well as the nature of performance of work. On 18.01.2013 a memo was issued with a Charge Sheet for acts of misconduct including unauthorized absence. In the enquiry that was held on 04.07.2014 the workman pleaded guilty of all the charges. He was awarded the punishment of dismissal on 22.08.2013. The dismissal is fully justified and is valid in law. The workman is not entitled to any relief.

5. The evidence in the case consists of oral evidence of WW1 and MW1 and documents marked as Ext.M1 to Ext.M25.

6. **The points for consideration are:**

- (i) Whether the Respondent is justified in terminating the service of Sampath Kumar, the concerned workman
- (ii) What, if any is the relief to which the petitioner is entitled?

The Points

7. Sampath Kumar, the workman concerned in the case had joined the service of the Respondent in May 2005 as a Part-Time Sweeper. Subsequently, his position was upgraded to that of Housekeeper-cum-Peon. The concerned workman is said to have committed several acts of misconducts while he was working at Coonoor and also at Gudalur from where he was dismissed from service. The dismissal is on the basis of admission of guilt made by the workman.

The contention that is raised by the Petitioner on behalf of the workman is that there is no justification in the order of dismissal passed by the Respondent.

8. Ext.M2 is the Charge Sheet dated 18.01.2013 that was issued to Sampath Kumar, the workman concerned. This Charge Sheet refers to various memos that were earlier issued to him. As seen from the Charge Sheet he has submitted his explanation to some of the memos but they were found not satisfactory or convincing. Regarding certain memos he had not submitted any explanation at all. The Charge Sheet states that the workman had committed gross misconducts by doing acts prejudicial to the interests of the Bank and had also committed the misconduct of drunkenness and riotous, disorderly and indecent behavior in the premises of the Bank. Minor misconducts of breach of rule of the business of the Bank, unpunctuality, neglect of work in duties and causing nuisance at the premises of the Bank are also charged against him.

9. The various memos which are the basis of Ext.M2 Charge Sheet are also produced by the Respondent and marked. In Ext.M18 (series), there is the memo dated 05.05.2011 (Page 13 of Ext.M18) which states that the concerned workman was in the habit of absenting from duty frequently without informing the branch so as to make suitable arrangements, was not in the habit of wearing uniforms during office hours in spite of repeated advise, was not cleaning the toilets and other premises of the Branch regularly and not keeping them neat and tidy and that the work entrusted by the Officers are not carried out by him in a vigilant manner and is frequently misplacing the papers and files. The charges in the memo dated 07.06.2011 (Page-11) are almost the same as that of the earlier one. Apart from this there is also the charge that he was unauthorizedly absent from 31.05.2011 to 04.06.2011 and he had not handed over the key of the branch premises to the officials. In the memo dated 28.07.2011 (Page-9) also similar charges. There is also the charge that things like seat covers, account opening forms, request for closure of accounts, etc. were heaped in the Generator Room without putting them in the proper place. In the memo dated 30.08.2011 it is stated that the concerned workman had been absenting from duty from 22.08.2011 without any information, that he had already been on leave for 66 days during the year and that in spite of memorandum on many occasions for his unauthorized absence there was no improvement in his attendance. He is asked to Show Cause why action should not be taken against him.

10. Ext.M18 (Page-6) is a letter written by the Branch Manager to the Chief Manager stating that Sampath Kumar is taking frequent leave and is in the practice of taking leave without informing the branch. It is further stated that during 2011 itself he had taken leave for more than 89 days. The Branch Manager wanted the concerned workman to be deployed in a small branch as he is not coping up with the work of his branch which is a larger one with more work. There is also a complaint alongwith Ext.M18 (Page-7) by a customer stating that the Bank premises and the staircase leading to it and the locker room are filthy and stinking and is badly maintained. This also contains the leave details of the concerned workman for the year 2011.

11. Ext.M19 (series) were marked as MEX-2 in the enquiry proceedings. Page-15 of this is a letter from the Branch Manager on 05.05.2011 to the Regional Office stating that the concerned employee was found addicted to alcohol and was found at the branch premises during the office hours in a drunken state. It further states that on 05.05.2011 he was subjected to medical test at a Government Hospital nearby. The Medical Certificate issued from the Hospital to the effect that he has consumed liquor also is attached to the letter.

12. Ext.M20 (series) contains another letter from the Assistant General Manager to the Regional Office with more complaints against the concerned employee. This states that an account holder had given a complaint that the concerned employee had demanded Rs. 100/- from the customer. It further states that the employee had slept in front of the branch premises on the pavement on 11.03.2012 night in drunken state and was found sleeping there till 0630 AM on 12.03.2012, that the Security Guard of the ATM of the Bank had reported that on 12.03.2012 the concerned employee in a drunken state overpowered the guard and slept in the passage in the ATM room causing nuisance to the ATM card users by abusing them in a filthy language, that he had approached the ATM premises with bruises all over his body after a scuffle elsewhere, that a staff of a nearby lodge had complained to the Manager orally about the nuisance caused by the concerned employee in a drunken state to the visitors of the lodge and Police having been called to remove the employee who was found sleeping at the bus station. The complaint by the customer, the branch manager's report regarding the incident and also the report given by the ATM Security Guard are alongwith the document.

13. Ext.M21 (series) also contains details of similar occurrences involving the concerned employee. The memo given by the Assistant General Manager to the employee (Page-25) states that the concerned employee came to the branch on 03.05.2012 in a drunken state and started chiding the customers, that he was in a inebriated condition and started shouting at the Accountant in the presence of many customers, moved helter skelter in the branch, pushing aside the customers causing embarrassment to the entire staff and he tore three cheque leaves from a cheque book meant for a Medical Officer. Ext.M21 also contains the report given by the Branch Manager to the Regional Manager regarding the incident of 03.05.2012.

14. Ext.M22 (series) involves the incident that occurred on 30.05.2012. The memo states that the employee came to the branch in a drunken state on 30.05.2012 and entered into altercation with the Assistant Manager and he left the branch on the Branch Manager's instruction, without doing any work on the day. The employee is asked to give

explanation for his conduct. The memo further states that he has not given any explanation for the previous memos. The copy of the report given by the Branch Manager to the Regional office also is attached to Ext.M22.

15. Ext.M23 (Page-30) is about the misconduct of the concerned employee on 15.06.2012. This states that he was found in a drunken state during the office hours of 15.06.2012 at the branch premises and was misbehaving with the ladies and other customers who visited the branch. It further states that a report has been received that he has sold all the records, computer sheets, etc. and the staff had to recover it from whom these were sold. The employee is asked to submit his explanation. The complaint given by a customer regarding his misbehavior and the letter written by the Branch Manager to the Regional Office are also enclosed with the document. There is also the copy of a complaint written by the members of the staff against the employee regarding his venture of making sale of old papers, etc. It is stated in the report given by 5 staff members to the Branch Manager that the concerned employee had sold a plastic bag containing old papers, computer sheets, etc. which were to be shifted to the Record Room, that coming to know about this they have gone to the Scrapper and had retrieved them from the one to whom they were sold.

16. Ext.M24 (Page-35) is a memo issued to the employee stating that on 05.07.2012 he reached the bank premises before 1000 AM and misled the customer who had reached the premises by telling him that the Bank was closed due to strike. The copy of the complaint given by the customer is also attached.

17. Lastly there is Ext.M25 containing the leave details of the concerned employee for the year 2011, 2012 and 2013. He seems to have been frequently on one or other leave and or unauthorized absence on several days.

18. All the documents referred to above were marked through MW1 who was working as Accountant at Gudalur Branch during the period in question. This witness has stated during his examination that the concerned employee had come to the branch in a drunken state and had created nuisance in front of customers and other staff members.

19. Even before the Management witness was examined the concerned employee had stated to the Enquiry Officer that he is pleading guilty of all the charges leveled against him and is apologizing for the same. After the Management witness was examined the Defence Representative did not cross-examine the witness but informed that the employee regrets his acts and will improve his behavior. Thus, it could be seen that the concerned employee has admitted all the charges against him.

20. It is a case where the facts speak themselves. It could be seen from the documents that the employee has proved himself unfit to be in the employment of the Respondent which he is to entertain the public and deal with the business of the public while doing its own business in a responsible manner. An employee who is frequently coming to the work in a drunken state and causing nuisance to the staff as well as to the customers and public at large does not deserve to be retained in the job. The counsel for the petitioner has been requesting that the employee should be given opportunity to reform and improve himself and he will be behaving in a more responsible manner in the future. He has been seeking the aid of the Apex Court in the decision in SCOOTER INDIA LIMITED, LUCKNOW VS. LABOUR COURT, LUCKNOW AND OTHERS reported in AIR 1989 SC 149 in this respect. Here the Apex court has observed that justice must be tempered with mercy and erring workman should be given opportunity to reform himself and prove to be a loyal and disciplined employee. It was a case where pamphlets, offensive handbills, etc. were distributed and exhibited in the factory premises. The charges against the employee concerned in the present case are more severe. He had proved himself to be unfit to do his work by repeating the acts of misconducts in spite of the several memos received by him and in spite of the advice by his superior Officers. It could be seen from the documents produced that though the concerned employee claimed to be have undergone de-addiction, even subsequently he had been resorting to similar misconducts. Ext.M6 is a memo issued to the concerned employee on 08.07.2013 for such misconduct. This states that on 02.07.2013 he came to the office drunk and misbehaved with the branch staff and customers. There is the evidence given by MW1, the same witness who was examined in the enquiry proceedings regarding the conduct of the concerned employee. He has stated that it was because of his misconduct he was shifted from Coonoor to Gudalur but there also he continued the misbehavior ultimately resulting in issuance of the Charge Sheet against him. The punishment imposed on the concerned employee is nothing but what he deserves. Even a modification of punishment is not called for. The punishment imposed is proportionate to the gravity of the misconduct committed by him. The concerned employee is not entitled to any relief.

In view of the forgoing discussion, the reference is answered against the petitioner. An Award is passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this 30th September, 2016)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner

: WW1, Sri V. Sampathkumar

For the 2nd Party/Management : MW1, Sri R. Vengatesan

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
	Nil	

On the Management's side

Ex.No.	Date	Description
Ext.M1	04.11.2009	Memo from Field General Manager's Office, Chennai to Assistant General Manager (IR), Central Office, Mumbai
Ext.M2	18.01.2013	Charge Sheet – NRO-DP-2096 issued to V. Sampathkumar
Ext.M3	08.03.2013	Letter from Sampathkumar to the Chief Manager of the Bank
Ext.M4	08.03.2013	Letter from Sampathkumar to Enquiry Officer –requesting to adjourn the enquiry
Ext.M5	08.03.2013 & 04.07.2013	Proceedings of enquiry on 08.03.2013 (Reg. Charge Sheet-NRO-DP-2096 dated 18.01.2013) – Proceedings of Enquiry on 04.07.2013
Ext.M6	08.07.2013	Charge Memo from regional office, Coimbatore (RO-HRM-403/2013) – issued to Sampathkumar
Ext.M7	10.07.2013	Management representative's written brief in respect of the enquiry conducted on allegations against V. Sampathkumar on the charge sheet No. NRO-DP-2096 dated 18.01.2013 – with a copy to Defence Assistant
Ext.M8	10.07.2013	Findings of Enquiry Officer (reg. Charge Sheet NRO-DP-2096 dated 18.01.2013)
Ext.M9	05.08.2013	Second Show Cause memo issued to Sampathkumar (on charge sheet NRO-dP-2096 dated 18.01.2013) –Proposing punishment of dismissal from service and stoppage of annual increment for 6 months and granting personal hearing on 19.08.2013 to represent against the proposed punishment (u/r). NrO-DP-1264 dated 05.08.2013
Ext.M10	19.08.2013	Proceedings of personal hearing before DA (Sampathkumar and his D.R. present)
Ext.M11	22.08.2013	Order issued to Sampathkumar (u/r No. NRO-DP-1408) dismissing him from service and stopping his next annual increment for 6 months
Ext.M12	05.09.2013	Appeal of V. Sampathkumar against the dismissal order dated 22.08.2013
Ext.M13	26.10.2013	Notice from Chief Manager (IR) (u/r-CO-IRD-6144-2013) granting personal hearing on his appeal – hearing on 18.11.2013
Ext.M14	07.12.2013	Order of Appellate Authority confirming the order of dismissal from service
Ext.M15	22.03.2014	2A dispute raised by Union before ALC (C) – I, Chennai (u/r GS-201-2014)
Ext.M16	17.05.2014	Reply of Bank to ALC (C).
Ext.M17	30.06.2014	Conciliation failure report [(u/r – 7(8)/2014] by ALC (C), Madurai
Ext.M18	15.10.2011	Memo No. RO.HRM-753/2011 from RO, Coimbatore to V. Sampathkumar
	20.09.2011	Memo from B.M. Coonoor to DGM – RO-CBE-u/r –staff/955/2011
	19.09.2011	Letter from Sampathkumar to Branch Manager
	30.08.2011	Memo from – R.O., Coimbatore (u/r – rO-HRM-923/2011) to Sampathkumar
	24.08.2011	Memo No. (Staff – 935/2011) to RO, Coimbatore
	22.08.2011	Complaint from Usha Sriram to the B/M, Coonoor.

	26.08.2011	Summary/Statement of Leave/Reason for Absence –from 10.01.2011 to 12.08.2011
	28.07.2011	Memo (Staff / 907/2011) from Coonoor Branch to RO, Coimbatore enclosing copy of memo (Staff – 906/2011 dated 28.07.2011) to Sampathkumar
	07.06.2011	Memo from Coonoor branch (staff/866/2011 to RO, Coimbatore – enclosing memo (Staff – 865/2011 dated 07.06.2011) issued to Sampathkumar
	05.05.2011	Memo from Coonoor branch (Adv/822/2011) enclosing copy of memo. Adv/821/2011 dated 05.05.2011 – issued to Sampathkumar
Ext.M19	05.05.2011	Complaint from Branch Manager, Coonoor to DGM-RO, Coimbatore on Sampathkumar
Ext.M20	16.04.2012	Charge Memo by R.O., Coimbatore issued to V. Sampathkumar (u/r – RO – HRM-151/2012) based on complaint by Mr. Hamsa Kutty – A/c Holder – and taking money for changing address in his account
	16.03.2012	Memo from Gudalur branch to AGM – RO, Coimbatore u/r STF/118/12 – reg. complaint against Sampathkumar enclosing copy of complaint of M. Hamsa Kutty
Ext.M21	02.06.2012	Memo from RO, Coimbatore – u/r RO-HRM-279/2012 – issued to V. Sampathkumar
	03.05.2012	Inter Office letter from B.M. – Gudalur branch to AGM - RO, Coimbatore – reg. misbehavior of Sampathkumar (u/r STF/130/12)
	03.05.2012	Inter Office letter from B.M, Gudalur branch to AGM-RO-Coimbatore (u/r STF/130/12) – Complaining Sampathkumar attending the branch on 03.05.2012 in drunken state and creating nuisance and misbehaving with customers
Ext.M22	04.06.2012	Memo from RO, Coimbatore to V. Sampathkumar (u/r RO-HRM.280/2012) attended bank on 30.05.2012 in drunken state and entered into altercation with Mr. Sureshkumar, Assistant Manager
	30.05.2012	Copy of e-mail dated 30.05.2012 7.41 pm from Branch Manager, Gudalur Branch
Ext.M23	05.07.2012	Memo from R.O., Coimbatore to V. Sampathkumar (u/r –RO-HRM-413/2012) – on complaint from V.A. Sebastian – Drunken state of Sampathkumar & Misbehaving with ladies and customers in bank premises on 15.06.2012 and having sold old records to a scrapper, etc.
	26.06.2012	Inter Office memo from Gudalur branch u/r – STF 162/12 – AGM, RO, Coimbatore enclosing complaint of V.A. Sebastian, Customer of branch alleging misbehavior of drunken conduct and outraging modesty of his daughter by Sampathkumar
	15.06.2012	Inter Office letter from Gudalur branch to AGM-RO, Coimbatore (u/r – STF-144/12) regarding complaint of Mr. Sarath made to Mr. Venkatan, Accountant on 14.06.2012 about misbehavior of Sampathkumar
	15.06.2012	Complaint letter of VA Sebastian – addressed to BM, UBI, Gudalur branch
	25.06.2012	Joint Complaint by all staffs in the branch on Sampathkumar – addressed to BM, Gudalur branch
Ext.M24	26.07.2012	Memo from R.O., Coimbatore to V. Sampathkumar (u/r-R.O. HRM-500/2012) for having misled Mr. A. Felix –customer who came to branch to remit cash on 05.07.2012, saying that the Bank is closed due to strike, when there was no strike in the branch
	25.07.2012	Inter Office letter from BM, Gudalur branch to AGM –RO, Coimbatore (u/r – STF 128/12) enclosing copy of complaint dated 05.07.2012 from A. Felix
	05.07.2012	Complaint dated 05.07.2012 from Mr. A. Felix
Ext.M25	02.11.2013	Leave/Absence details of Sampathkumar from 10.01.2011 to 22.06.2013

नई दिल्ली, 8 नवम्बर, 2016

का.आ. 2253.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आंध्रा बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ सं. 72/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 08.11.2016 को प्राप्त हुआ था।

[सं. एल-12011/80/2014-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 8th November, 2016

S.O. 2253.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 72/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure in the Industrial Dispute between the management of Andhra Bank, Zonal Office and their workmen, received by the Central Government on 08.11.2016.

[No. L-12011/80/2014-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present:

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 72/2014

No. L-12011/80/2014-IR (B-II), dated 17.12.2014

Date of Passing Order – 21st July, 2016

Between :

The Zonal Manager,
Andhra Bank, Zonal Office,
Janana Hospital Road, Berhampur,
(Orissa) – 760 004

...1st Party-Management.

(And)

The General Secretary,
Orissa State Andhra Bank Employees Union,
Lewis Road, Bhubaneswar (Orissa) – 741 014

...2nd Party-Union.

Appearances:

None ... For the 1st Party-Management.

None ... For the 2nd Party-Union.

ORDER

Case taken up. Parties are absent. The 2nd Party-Union has not filed any statement of claim despite sending notices through ordinary as well as regd. post. In order to give a last opportunity to the 2nd party-Union notice was issued on 10.6.2016 fixing 21.7.2016 for appearance and for filing of statement of claim, but neither the 2nd party-Union caused appearance today nor has filed any statement of claim. As such it seems that the 2nd party-Union is not interested in prosecuting its case. However the dispute cannot be adjudicated upon for want of pleadings on behalf of the parties. As such there is no other alternative except to return the reference to the Government for necessary action at its end.

2. Accordingly the reference is returned to the Government of India, Ministry of Labour unanswered for necessary action at its end.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 8 नवम्बर, 2016

का.आ. 2254.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सैन्ट्रल बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चंडीगढ़ के पंचाट (संदर्भ सं. 45/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 08.11.2016 को प्राप्त हुआ था।

[सं. एल-12012/151/2004-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 8th November, 2016

S.O. 2254.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 45/2004) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure in the Industrial Dispute between the management of Central Bank of India and their workmen, received by the Central Government on 08.11.2016.

[No. L-12012/151/2004-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II,
CHANDIGARH****Present:** Sri Kewal Krishan, Presiding Officer**ID No. 45/2004**

Registered on 30.11.2004

Sh. Jaspal Singh, S/o Sh. Avtar Singh, R/o 15 Dayal Bagh,
Babyal Road, Ambala Cantt.

...Applicant

Versus

1. The Central Bank of India, through its Deputy General Manager, SCO No.58-59, Bank Square, Sector 17-B, Chandigarh.
2. The Asstt. General Manager, Central Bank of India, SCO No.58-59, Bank Square, Sector 17-B, Chandigarh.
3. The Chief Manager(Personnel Department), Central Bank of India, SCO No.58-59, Bank Square, Sector 17-B, Chandigarh.
4. The Central Bank of India, through its Manager, 106, Railway Road, Ambala Cantt.

...Respondents

APPEARANCES

For the workman	-	Sh. Vijay Mangla, Adv.
For the management	-	Sh. N.K. Zakhmi, Adv.

AWARD

Passed on:-17.08.2016

Vide Order No.L-12012/151/2004-IR(B-II), dated 09.11.2004 the Central Government in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of Central Bank of India in terminating the services of Sh. Jaspal Singh w.e.f. 20.10.2002 is legal and justified? If not, what relief is the concerned workman is entitled to?”

In response to the notice, workman appeared and filed statement of claim, pleading that he was employed as Driver-cum-Peon by the respondent-bank in January 1995 with the assurance of giving regular service after 3 years as per instructions issued by the respondent-bank, providing the following conditions:-

- (i) *A minimum of 3 years experience as a personal Car Driver of Bank's Executive.*
- (ii) *Age: Not more than 40 years.*
- (iii) *Qualification: Minimum 8th class pass.*
- (iv) *Registration of name with the Employment Exchange.*

That he worked with Sh. A.K. Mittu, , Sh. S.S. Jaswal and Sh. S.L. Doda, Regional Manager. That his services were not regularized as per instructions despite his written representation. He also filed Civil Writ Petition No.15885 of 2002 and 279 of 2004 which were disposed of. That his services were illegally terminated on 20.10.2012 without paying him any retrenchment compensation and the persons junior to him were retained in service as well new persons were also employed. That his services were illegally terminated and he be reinstated in service.

Respondent-management filed written statement, controverting the averments and denied that workman was ever appointed as Driver-cum-Peon by the respondent-management. However, it is admitted that the executives of the respondent-management employed the workman as a personal Driver and he was never employed by the respondent-bank. It was the executives of the bank who paid him out of their allowances. That there was no relationship of master and servant between the parties.

Parties were given opportunities to lead their evidence.

In support of his case, the workman Sh. Jaspal Singh appeared in the witness-box and filed his affidavit supporting his case as set out in the claim petition.

On the other hand, respondent-bank filed affidavit of Sh. Ramesh Chand and Sh. M.L. Jain, who had worked as Regional Manager and reiterating the stand as taken by the respondent-bank.

I have heard Sh. Vijay Mangla for the workman and Sh. N.K. Zakhmi for the management and perused the file.

The learned counsel for the workman carried me through the identity card Ebt.W2 and registration certificate as Exb.W3 as well as through the photocopies of the log book and submitted that the log book of the vehicle of the bank was filled by the workman who was issued an identity card by the bank itself and therefore, the workman was the employee of the bank. The learned counsel further submitted that he continuously worked with three different Regional Managers and if he was the personal Driver of one officer, he was not to continue in service and an inference be drawn that he was an employee of the bank.

I have considered the contention of the learned counsel.

The workman when appeared in the witness-box admitted in his cross-examination that Executives of the respondent-management could engage their personal Drivers for driving bank vehicles. He has further stated that the Executives engaged their personal drivers on their own and the bank has nothing to do with the engagement of Drivers. He further admitted that the Executives used to make the payment to the Drivers from their own pocket. Thus, his own statement leaves no doubt that the Regional Managers were engaging him as their personal driver, though, for driving the vehicle of the bank, and it were the Regional Managers who were making the payment to him. In the circumstances, the identity card as well as the log book produced on the file carry no weight.

Again there is nothing on the file that he was ever paid any salary by the respondent-bank. Though according to him, he continuously worked from 1995 to 2002 and in the absence of this evidence that he was paid salary by the bank, he cannot be treated as an employee of the bank. If there are instructions to absorb the personal car drivers in bank service, the workman was never absorbed in the service as per the said instructions and therefore, cannot claim any relief from such a instructions, if any, issued by the respondent-bank.

The workman himself has produced a certificate Annexure A4, issued by Sh. A.K. Mittu, Regional Manager and Annexure A5, issued by Sh. S.S. Jaswal, Regional manager wherein it is specifically mentioned that the workman was employed by them as their personal driver and in view of these documents, relied upon by the workman himself, it cannot be said that he was ever employed by the respondent-bank or he was an employee of the bank and being so, it cannot be said that his services were terminated by the respondent-bank.

In result, the reference is answered holding that the workman has failed to prove that he was an employee of the respondent-bank and as such the termination of his services by the respondent-bank do not arise and he is not entitled for any relief and the reference is answered accordingly.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 8 नवम्बर, 2016

का.आ. 2255.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार देना बैंक के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण/श्रम न्यायालय नं. 1, मुम्बई के पंचाट (संदर्भ सं. 67/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 08.11.2016 को प्राप्त हुआ था।

[सं. एल-12012/157/2003-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 8th November, 2016

S.O. 2255.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 67/2003) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Mumbai as shown in the Annexure in the Industrial Dispute between the management of Dena Bank, and their workmen, received by the Central Government on 08.11.2016.

[No. L-12012/157/2003-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, MUMBAI

Present : JUSTICE S.P.MEHROTRA, Presiding Officer

REFERENCE NO.CGIT-1/67 OF 2003

Parties : Employers in relation to the management of Dena Bank

And

Their workman (D.R. Dube)

Appearances :

For the first party no.1 / Management : Ms.NandiniMenon, Adv.

For the second party / workman : Mr.M.B.Anchan, Adv.

State : Maharashtra

Mumbai, dated the 6th day of May, 2016

AWARD PART-I

1. The present Reference has been made by the Central Government by its Order dated 22.11.2003 passed in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947. The terms of Reference as per the Schedule to the said Order are as under:

“Whether the action of the management of Dena Bank, Mumbai in terminating the services of ShriD.R.Dube w.e.f.26.4.2000 is justified? If not, what relief the workman, ShriD.R.Dube is entitled to”

2.. By the Order dated 15.12.2003, this Tribunal directed for issuance of Notice to the parties in respect of the above Reference.

3. The second party/Workman D.R.Dubey(hereinafter also referred to as “the Charge-Sheeted Employee” or “CSE”) put in appearance and filed **Statement of Claim dated 15.3.2004**. It is, inter-alia, alleged in the Statement of Claim that the second party/Workman was working as a Cashier-cum-Clerk at GoldevalBranch of Dena Bank; and that the second party/Workman was chargesheeted and suspended from work by letter dated 17.6.1999 for the alleged misconduct of handing over the letter heads of Dena Bank to one PramodSitaramJaiswal for misusing it for fraudulent purposes during the period from 30.7.1996 to 2.6.1999; and that the second party/Workman was charged for:

- (i) *Wilful damage or attempt to cause damage to the property of the Bank or any of its customers;*
- (ii) *Doing an act prejudicial to the interest of the Bank or gross negligence or negligence involving or likely to involve the Bank in serious loss.*

4. It is, inter-alia, further alleged in the Statement of Claim that the charges were baseless and issued with malafide intention; and that the second party/Workman did not hand over the letter heads of the Bank to PramodS.Jaiswal on his own; and that the letter head Pad was lying on the table of the Branch Manager; and that the party Mr.Jaiswal wanted to take away some letter heads; and that the Branch Manager called the second party/Workman to his cabin and told him to hand over 4-5 letter heads to Mr. Jaiswal; and that accordingly the second party/Workman handed over the 4-5 letter

heads to Mr. Jaiswal on the instructions of the Branch Manager; and that the second party/Workman had not handed over the letter heads to Mr. Jaiswal of his own will.

5. It is, inter-alia further alleged in the Statement of Claim that the second party/Workman did not introduce the “Current Account No.15009 of Om SaiShobha of Mr.J.R.Agarwal”; and that on 31.5.1999, the Branch Manager Mr.Mehta called the second party/Workman to his cabin and told him to sign the introduction column of the Current Account Opening Form of Om SaiShobha ; and that the said Account was already opened on 8.2.1999; and that when the second party/Workman asked the Branch Manager why his signature was being taken on the Account Opening Form, the second party/Workman was told that there was nothing wrong in the said Account and that the second party/Workman would not come into any trouble; and that since the second party/Workman was being pressurized to sign, he signed the said Form and put the date of 31.5.1999 i.e., the day on which he was asked to sign; and that later on the date 31.5.1999 was cancelled and the date of 8.2.1999 was put by the Branch Manager; and that the Branch Manager had manipulated the document just to involve him; and that the charges against the second party/Workman were baseless.

6. It is, inter-alia, further alleged in the Statement of Claim that the alleged statement dated 15.6.1999 (MEX-4) given by the second party/Workman was taken by force and duress; and that Mr.Bengali, the Vigilance Officer dictated the said statements to the second party/Workman and took his signatures; and that even though the alleged statements were taken by force by Mr.Bengali,Mr.Bengali did not sign the same, and only the second party/Workman’s signatures were taken alongwith that of Mr.Ingle, the Branch Manager, as the witness; and that a false case had been made out against the second party/Workman by the Bank.

7. It is, inter-alia, further alleged in the Statement of Claim that the enquiry held against the second party/Workman on the alleged charges is against the principles of natural justice; and that the second party/Workman was chargesheeted and suspended from duty by an Order dated 17.6.1999; and that from 17.6.1999, the second party/Workman was under the Police Custody; and that the second party/Workman was arrested on 21.6.1999 and he was released on bail from 28.8.1999; and that since he was under Police Custody, he could not submit his defence statement; and that immediately after his release the enquiry was started and as such, he had no time to submit his defence statement; and that the Enquiry Officer fixed the preliminary enquiry on 21.9.1999; and that on 18.9.1999 the second party/Workman wrote a letter to the Enquiry Officer stating that on 21.9.1999, he had to appear before the Criminal Court and that his DefenceCounsel Mr.Pednekar was also busy in Bi-Partite meetings and hence requested the Enquiry Officer to adjourn the enquiry; and that on that day the second party/Workman was told by the Enquiry Officer that the next date would be intimated to him by post; and that the next date of enquiry was fixed on 3.11.1999; and that on 3.11.1999, the second party/Workman attended the Enquiry Proceedings; and that since the DefenceCounsel for the second party/Workman did not appear, the second party/Workman requested for an adjournment, and accordingly, the enquiry was adjourned to 12.11.1999; and that on 12.11.1999, the second party/Workman requested the Enquiry Officer to postpone the enquiry to some other date to enable him to engage another DefenceCounsel; and that the Enquiry Officer did not adjourn the enquiry and he proceeded with the enquiry without the second party/Workman’s DefenceCounsel.

8. It is, inter-alia, further alleged in the Statement of Claim that the enquiry proceedings were not held in presence of the second party/Workman; and that the enquiry proceedings were held in the Conference Hall of the Bank; and that there was a big table for conferences and meetings, and the second party/Workman himself, the Presenting Officer and the Enquiry Officer were sitting at the corner of the table; and that on the other end of the table, Mr. Bengali, the Vigilance Officer and the witness of the Bank were seated; and that Mr. Bengali dictated the enquiry proceedings to the Typist, and thereafter the second party/Workman’s signature were taken without explaining to him the proceedings; and that the enquiry proceedings were dictated by Mr. Bengali to the Typist and not by the Enquiry Officer;and that the enquiry was not held properly; and that the second party/Workman was not given the copies of the Exhibits during the enquiry, and the same were given to him after eight days; and that the enquiry held is against the principles of natural justice and, therefore, vitiated.

9. It is, inter-alia, further alleged in the Statement of Claim that the findings of the Enquiry Officer are perverse; and that in the enquiry the second party/Workman was not given a fair opportunity to defend properly; and that the second party/Workman wrote two letters dated 8.12.1999 and 23.12.1999 to the Bank to hold a fresh enquiry, however, his request was not considered.

10. It is, inter-alia, further alleged in the Statement of Claim that the Enquiry Officer in his findings held the second party/Workman guilty of all the charges; and that the conclusion arrived at by the Enquiry Officer are perverse.

11. It is, inter-alia, further alleged in the Statement of Claim that the second party/Workman had made an appeal to the Appellate Authority; and that the appeal was not considered by the Appellate Authority; and that on this ground also the enquiry is vitiated.

12. It is, inter-alia, further alleged in the Statement of Claim that the past records of the second party/Workman have not been considered by the Disciplinary Authority and the Appellate Authority while imposing the punishment of dismissal and compulsory retirement, and on this ground, his compulsory retirement is illegal and not justified.

13. It is, inter-alia, further alleged in the Statement of Claim that the co-accused Branch Manager, Mr. Ingle was also dismissed for the same offence by the Disciplinary Authority; and that on an appeal being made by him, the Appellate Authority modified the penalty to that of compulsory retirement.

14. In view of the averments made in the Statement of Claim, it is prayed by the second party/Workman that the reliefs as prayed for in the Statement of Claim, including, inter-alia, the reliefs for reinstatement in service with full back wages and continuity of service be granted to the second party/Workman.

15. **Written Statement dated 20.8.2004** was filed on behalf of the first party/Management (hereinafter also referred to as the “first party / Bank” or “The Bank”). It is, inter-alia, stated in the Written Statement that at the relevant time the second party/Workman was employed as a Cashier-cum-Clerk at the Goldeval Branch of the first party / Bank; and that the second party/Workman is alleged to have handed over the letter heads of the Bank’s Goldewal Branch to one P.S. Jaiswal, an outsider during the course of business hours; and that the said Shri Jaiswal got the certificates of the Bank’s Financial Guarantee typed on these letter heads outside the Bank’s premises and he forged the signature of the then Branch Manager, Shri Ingle and thereafter, mis-used it by attempting to borrow funds to the extent of Rs.10 crores in a fraudulent manner.

16. It is, inter-alia, further stated in the Written Statement that the second party/Workman was issued a Chargesheet-cum-Suspension Order by Memo dated 17.6.1999 by the Disciplinary Authority, Deputy General Manager, Mumbai City Region, wherein in terms of paragraphs 19.5 (d) and (j) of the Bipartite Settlement, the following charges of gross misconduct were levelled against the second party/Workman:

- (i) *Wilful damage or attempt to cause damage to the property of the Bank or any of its customers;*
- (ii) *Doing an act prejudicial to the interest of the Bank or gross negligence or negligence involving or likely to involve the Bank in serious loss.*

17. It is, inter-alia, further stated in the Written Statement that since the explanation to the Chargesheet-sum-Suspension Order issued to the second party/Workman was not found satisfactory, the Departmental Enquiry under the applicable Rules was instituted in the matter; and that Shri A.K. Thakur, the then Senior Manager, Mumbai Suburban Region was appointed as the Enquiry Officer. It is, inter-alia, further stated in the Written Statement that though the second party/Workman was given a chance of being represented and defended at the Enquiry by a Representative of his choice, the second party/Workman preferred to defend himself and categorically informed the Enquiry Officer that he would conduct his own defence.

18. It is, inter-alia, further stated in the Written Statement that the first party/Bank examined Shri H.D. Bengali, Manager, Inspection and Internal Audit Department, Main Office, in support of its case; and that Shri H.D. Bengali had investigated the charges against the second party/Workman; and that the second party/Workman cross-examined H.D. Bengali. It is, inter-alia, further stated in the Written Statement that the second party/Workman chose not to step into the witness box and he also did not lead any other evidence on his behalf and further, he did not file any documents in support of his case. It is, inter-alia, further stated in the Written Statement that the second party/Workman was present at the Enquiry and he was given a copy of the Enquiry Proceedings on each date. It is, inter-alia, further stated in the Written Statement that by his Report and Findings dated 2.3.2000, the Enquiry Officer held that the charges against the second party/Workman were proved.

19. It is, inter-alia, further stated in the Written Statement that the Report and Findings of the Enquiry Officer were sent by the Disciplinary Authority to the second party/Workman by the letter dated 3.3.2000, which was received by the second party/Workman on 5.3.2000; and that the second party/Workman was directed to make his representation if any, against the Report and Findings of the Enquiry Officer within 7 days; and that the second party/Workman did not submit any representation as required, though adequate opportunity was given to him; and that the Disciplinary Authority, the Deputy General Manager, Mumbai City Region, after going through the entire records and proceedings, including the letters dated 8.12.1999 and 23.12.1999 addressed by the second party/Workman, imposed on the second party/Workman the punishment of “Dismissal without Notice with immediate effect”.

20. It is, inter-alia, further stated in the Written Statement that the second party/Workman preferred an appeal to the Appellate Authority on 12.6.2000; and that the Appellate Authority gave a personal hearing to the second party/Workman on 26.3.2001; and that after considering the Report and Findings of the Enquiry Officer, the findings of the Disciplinary Authority and the Appeal made by the second party/Workman as well as the representation made by the second party/Workman at the personal hearing given to him, the Appellate Authority, General Manager, Maharashtra Operations, by his order dated 12.12.2001 confirmed the punishment given by the Disciplinary Authority, while concurring with the views of the Disciplinary Authority.

21. It is, inter-alia, further stated in the Written Statement that in the light of the gravity of the misconduct alleged and proved against the second party/Workman at a full-fledged Departmental Enquiry, no interference be made by this Tribunal with the Order of Punishment imposed on the second party/Workman.

22. It is, inter-alia, further stated in the Written Statement that the second party/Workman had admitted handing over 4-5 letter heads to an unauthorized person; and that the second party/Workman had signed on the Account Introduction Form of Shri J.R. Agarwal of Om Sai Shobha; and that the allegation made by the second party/Workman that the Statement dated 15.6.1999 (MEX-4) was taken from him under duress, is false to his own knowledge; and that the first party/Bank had given sufficient and reasonable opportunity to the second party/Workman to defend himself; and that sufficient opportunity was given to the second party/Workman during the course of the enquiry proceedings; and that a perusal of the enquiry proceedings would reveal that the second party/Workman was asked whether he would like to be defended by a defence representative and whether he would like to bring a witness and he replied in the negative; and that the second party/Workman was furnished with the enquiry proceedings and there was no delay on the part of the first party/Bank; and that the enquiry proceedings were held in a fair and proper manner and in full compliance with the principles of natural justice; and that the second party/Workman had also availed of the statutory remedy of Appeal; and that the Appellate Authority had given the second party/Workman a personal hearing; and that the Appeal preferred by the second party/Workman was dismissed after due consideration of all the relevant factors by the Appellate Authority.

23. It is, inter-alia, further stated in the Written Statement that the first party/Bank had dismissed Shri Ingle, the then Branch Manager, after a full-fledged enquiry was held against him; and that however, on Appeal, the Order of Dismissal was converted into one of Compulsory Retirement by the Appellate Authority exercising the discretion and the jurisdiction vested in him.

24. It is, inter-alia, further stated in the Written Statement that the Disciplinary Authority and the Appellate Authority both applied their minds to the facts of the case and passed their Orders after due consideration of all the factors.

25. In reply to the Written Statement filed on behalf of the first party/Bank, the second party/Workman filed his **Rejoinder dated 6.4.2005** reiterating the averments made in the Statement of Claim. It is, inter-alia, further stated in the Rejoinder that the Letter Head Pad was lying on the table of the Branch Manager; and that when Mr. Jaiswal asked for 4-5 letter heads from the Branch Manager, the Branch Manager instructed the second party/Workman to hand over 4-5 letter heads to Mr. Jaiswal; and that the second party/Workman accordingly handed over 5 letter heads to Mr. Jaiswal; and that the second party/Workman had handed over the letter heads on the instructions of the Branch Manager. It is, inter-alia, further stated in the Rejoinder that the second party/Workman had given the letter heads to Mr. Jaiswal on the instructions of the Branch Manager Mr. D.C. Ingle, and this statement the second party/Workman had made before the Vigilance Officer, Mr. Bengali; and that in that statement Mr. Ingle was the witness.

26. On the basis of the pleadings exchanged between the parties, this Tribunal by the Order dated 14.12.2011, framed the following **Issues** in the present case.

1. *Whether the enquiry held against the workman is not fair and proper?*
2. *Whether the findings of the Enquiry Officer are perverse?*
3. *Whether the action of the management of Dena Bank, Mumbai in terminating the service of the workman A.R. Dube w.e.f. 26.4.2000 is justified?*
4. *Relief?*

27. A perusal of the Order dated 14.12.2011, further shows that learned counsel for the parties closed their evidence with regard to Issue Nos. 1 and 2, and the case was fixed for arguments on 11.1.2012 on Issue Nos. 1 and 2. The case was thereafter fixed on various dates for arguments on the said Issues i.e. Issue Nos. 1 and 2. **Therefore, the said Issue Nos. 1 and 2 are to be considered as Preliminary Issues, and the present Award Part-I is being given in regard to the said Issues.**

28. Both the sides have led **evidence** in support of their respective cases. The second party/Workman filed documentary evidence in support of his case. Further, the second party/Workman (Deviprasad R. Dubey) (WW-1) filed his affidavit in lieu of examination-in-chief which was treated as his examination-in-chief. He was cross-examined by Ms. Nandini, Menon, learned counsel for the first party/Management.

29. The first party/Management filed documentary evidence in support of its case. Further, the first party/Management filed affidavit of Shri A.K. Thakur (MW-1), Enquiry Officer in lieu of examination-in-chief which was treated as his examination-in-chief. The said A.K. Thakur was cross-examined by Shri M.B. Anchan, learned counsel for the second party/Workman.

30. On an Application dated 13.10.2011, filed on behalf of the second party/Workman, inter-alia, praying for issuing Summons to the Assistant Police Commissioner, Narcotics, Cuffe Parade Police Station, Colaba, Mumbai, this Tribunal by the Order dated 13.10.2011, directed for issuance of Witness Summons to the Assistant Police Commissioner, Narcotics, Colaba, Mumbai. Witness Summons were accordingly issued fixing 15.11.2011 to appear before this Tribunal alongwith original Account Opening Form in respect of Current Account No. 15009 of the Goldeval Branch of Om SaiShobha. It appears that on 15.11.2011, the case was adjourned to 14.12.2011. On the said date i.e. 14.12.2011, Statement of LaxmanKharparde was recorded, and he was cross-examined by Ms.NandiniMenon, learned counsel for the first party/Management. The said witness LaxmanKharparde in his examination-in-chief stated; "Ex.W-7 is the Account Opening Form of Om SaiShobha of whose proprietor is TulsiramRamchandraAgarwal. Ex.W-7(A) is photo copy of Ex.W-7".

31. After the statement of the aforesaid LaxmanKharparde, this Tribunal passed the following order dated 14.12.2011 which has been referred to earlier also:

"Mr.Anchan, Adv present for the workman.

Ms.NandiniMenon, Adv present for the Bank.

Learned counsel on behalf of the workman has examined Laxman Kharpade and he has been cross-examined by the learned counsel for the Bank.

Account Opening Form Ex.W-7 is returned to the Witness LaxmanKharpade as learned counsel for the Workman is satisfied with the photocopy Ex.W-7(A).

On perusal of the file, it is noticed that Issues have not been framed. Therefore, Issues framed with the consent of learned counsels for the parties.

Learned counsels for the parties closes their evidence with regard to Issues Nos. 1 and 2.

Put up for Arguments on 11.1.2012 on Issues Nos. 1 and 2."

32. I have heard ShriM.B.Anchan, learned counsel for the second party/Workman and Ms.NandiniMenon, learned counsel for the first party/Management on Preliminary Issue Nos. 1 and 2 and perused the record.

33. **Submissions** made by the learned counsel for the parties will be dealt with at the appropriate places while recording Findings on Preliminary issues.

FINDINGS:

34. ISSUE NO.1:

As noted earlier, Issue No.1 is as to "Whether the enquiry held against the workman is not fair and proper?"

Before proceeding to deal with the submissions made by the learned counsel for the parties in regard to the said issue, it is pertinent to refer to relevant **material on record** in this regard.

35. In his Statement as WW-1, the second party/Workman has admitted that at the relevant time he was working as a Cashier-cum-Clerk at Goldeval Branch of the first party/ Bank (Dena Bank), and that he was issued **Chargesheet-cum-Suspension Order dated 17.6.1999** for the alleged misconduct of handing over letter heads of the Branch to one PramodSitaramJaiswal for misusing it for fraudulent purposes.

36. The said Chargesheet-cum-Suspension Order dated 17.6.1999 is Ex.M-1 on the record of this Tribunal. In the said Chargesheet, it was, inter-alia, stated that "While working as a Cashier-cum-Clerk at our Goldeval Branch during the period 30.7.1996 to 2.6.1999, you had handed over the letter heads of our Goldeval Branch to one ShriPramodSitaramJaiswal for misusing it for fraudulent purposes. Shri Jaiswal got the Certificate of Bank Financial Guarantee typed on the said Bank's letter head outside the premises of the Bank and he forged the signature of the Branch Manager. He misused it thereafter to borrow the funds to the tune of Rs.10.00 crores in a fraudulent manner". It was, inter-alia, further stated in the said Chargesheet that "Your said serious misconductshave not only damaged the reputation/image of the Bank, but also exposed it to the heavy financial risk/loss." In the circumstances, the second party/Workman was charged with the following gross misconduct in terms of para 19.5(d) and (j) of Bipartite Settlement as under:

(i) *Wilful damage or attempt to cause damage to the property of the Bank or any of its customers;*

(ii) *Doing any act prejudicial to the interest of the Bank or gross negligence or negligence involving or likely to involve the Bank in serious loss."*

37. The said Chargesheet-cum-Suspension Order required the second party/Workman to submit his explanation, in writing, in the above matter within 7 days from receipt thereof failing which it would be presumed that the second party/Workman had no explanation to offer and the matter would be dealt with accordingly.

38. It further appears from the material on record that since the explanation submitted by the second party/Workman in respect of the aforesaid Chargesheet-cum-Suspension Order was not satisfactory, the Departmental Enquiry under the applicable Rules was instituted in the matter. Shri A.K. Thakur, the then Senior Manager, Mumbai Suburban Region was appointed as the Enquiry Officer.

39. The *proceedings of the Departmental Enquiry* held by Shri A.K. Thakur have been proved by Shri A.K. Thakur in his Statement as MW-1 before this Tribunal, and the same are Ex.M-2 on the record of this Tribunal. A perusal of the proceedings of the Departmental Enquiry shows that the Preliminary Hearing was conducted on **12.11.1999**. On the said date, the second party/Workman (D.R. Dubey) was present in the proceedings. The Enquiry Officer asked the second party/Workman as to whether the second party/Workman had received the Chargesheet dated 17.6.1999. The second party/Workman replied in the affirmative and said that he had received the Chargesheet. The Enquiry Officer further asked the second party/Workman as to whether he had gone through the contents of the Chargesheet and understood it. The second party/Workman replied in the affirmative, thus confirming that he had gone through the contents of the Chargesheet and understood the same. The Enquiry Officer further asked the second party/Workman as to whether he accepted the charges and pleaded guilty. The second party/Workman stated that he did not plead guilty. The Enquiry Officer thereafter asked the second party/Workman as to whether he wanted to be defended by any Defence Representative. The second party/Workman replied in the affirmative and stated that he wanted to be defended by Defence Representative, but on account of pre-occupation of his Union leaders none of them were in a position to appear as Defence Representative on the said date, and as such, the second party/Workman requested that he be granted some more time. The Enquiry Officer further enquired from the second party/Workman as to whether he had any objection to complete Preliminary Hearing without his Defence Representative, whereupon the second party/Workman replied that he was ready to complete the Preliminary Hearing in absence of his Defence Representative. The Enquiry Officer thereupon directed the Presenting Officer to submit his list of documents and witness to substantiate the charges. The Presenting Officer submitted list of documents and name of witness alongwith Certified True Copies of documents. One set of the list of documents and Certified True Copies of documents was also handed over to the second party/Workman, and he acknowledged the receipt thereof as is evident from the proceedings of the said date. The Enquiry Officer thereafter asked the second party/Workman as to whether he accepted the genuineness and authenticity of the documents listed and supplied to him. The second party/Workman replied in the affirmative and stated that he accepted that the documents supplied to him were genuine documents. The Enquiry Officer further asked the second party/Workman as to whether he wanted to inspect the listed documents. The second party/Workman replied that he did not want to inspect the documents. In the circumstances, all the documents mentioned above were accepted as Management Exhibits and given numbers as MEX-1, MEX-2, MEX-3 and MEX-4.

40. In view of the request made by the second party/Workman, as mentioned above, next hearing was fixed on 18.11.1999. The second party/Workman was advised to be present alongwith his Defence Representative and documents, if any, in his defence.

41. The proceedings of the Preliminary Hearing held on 12.11.1999, as detailed above, have been signed by the Enquiry Officer, the Presenting Officer and the second party/Workman (D.R. Dubey). It may be mentioned that in his cross-examination before this Tribunal, the second party/Workman (WW-1) stated that “It is correct to say that preliminary hearing of the enquiry was held on 12.11.1999. The proceedings dated 12.11.1999 bears my signature”. It may be further mentioned that in his statement as MW-1, before this Tribunal, A.K. Thakur, Enquiry Officer, reiterated in detail the proceedings held on 12.11.1999, and further stated that “The Minutes of the Meeting held on 12.11.1999 are annexed at pages 3-4 of the Compilation of Documents dated 22.5.2006 filed by the Management. I say that the Presenting Officer, the second party and I signed at the foot of the Enquiry Proceedings on 12.11.1999. I also furnished the Presenting Officer and the second party with copies of the Minutes. I identify the said Minutes. I identify my signature. I identify the signature of the Presenting Officer and the second party since they had signed the Minutes in my presence”.

42. The next hearing in the enquiry was held on **18.11.1999**, the proceedings whereof are part of Ex.M-2 on the record of this Tribunal. A perusal of the proceedings held on 18.11.1999 shows that on the said date, the Presenting Officer and the second party/Workman were present before the Enquiry Officer. The Enquiry Officer asked the second party/Workman as to whether he had brought his Defence Representative and his list of documents as was agreed to by the second party/Workman in the proceeding held on 12.11.1999. The second party/Workman replied that due to pre-occupation of his Union Leaders, he had not been able to bring his Defence Representative on the said date i.e. 18.11.1999. The second party/Workman requested the Enquiry Officer to give him about a week's time to bring his Defence Representative. The second party/Workman also promised to submit List of Documents and List of Witnesses on the next date of hearing positively. The Presenting Officer objected to the request for adjournment made by the second party/Workman and further requested that on next hearing no adjournment be given on the ground that the second party/Workman was unable to bring his Defence Representative. The Enquiry Officer asked the second party/Workman as to on which date (not later than 27.11.1999), the second party/Workman would be in a position to bring his Defence Representative positively alongwith List of Documents and Witnesses. The second party/Workman

replied that the next date of hearing be fixed on 26.11.1999 and further stated that he would bring his Defence Representative definitely on that date and time fixed by the Enquiry Officer. The Enquiry Officer thereupon fixed 26.11.1999 and directed the second party/Workman to note that no further adjournment would be given to him on the pretext of non-availability of his Defence Representative.

43. It may be mentioned that in his cross-examination before this Tribunal, the second party/Workman (WW-1) stated that “I was also present in the enquiry on 18.11.1999. The proceedings of 18.11.1999 bears my signature”. It may be further mentioned that in his statement as MW-1, before this Tribunal, A.K.Thakur, Enquiry Officer, reiterated in detail the proceedings held on 18.11.1999, and further stated that “the Presenting Officer, the second party and I signed at the foot of the Minutes of the Proceedings held on 18.11.1999. I handed over copies of the Minutes to the Presenting Officer and the second party. The said Minutes are at page 5 of the Compilation of Documents dated 22.5.2006. I identify the said Minutes. I identify my signature. I identify the signatures of the Presenting Officer and the second party since they had signed the Minutes in my presence”.

44. The next hearing in the enquiry was held on **26.11.1999**, the proceedings whereof are part of Ex.M-2 on the record of this Tribunal. On the said date, the Presenting Officer and the second party/Workman were both present before the Enquiry Officer. The Enquiry Officer asked the second party/Workman as to whether his Defence Representative had come on that date and whether he had brought his List of Documents / Witness in his defence. The second party/Workman replied that his Defence Representative had not come and he did not have any documents/witness to defend his case. The Enquiry Officer thereupon asked the second party/Workman: “Shall we proceed with the enquiry proceedings?”. The second party/Workman answered: “As my DR (Defence Representative) has not come, I will defend myself, you may start the proceedings”. Thereafter, the Presenting Officer produced H.D.Bengali, Manager, Inspection and Audit Department, Main Office as Management Witness. After the examination-in-chief of the said Management Witness (H.D.Bengali) concluded, the Enquiry Officer asked the second party/Workman as to whether he wanted to cross-examine the said Management Witness. The second party/Workman replied in the affirmative and stated that he wanted to cross-examine the said Management Witness. The Enquiry Officer thereupon permitted the second party/Workman to cross-examine the said Management Witness. The second party/Workman cross-examined the said Management Witness and, thereafter declared that his cross-examination of the said Management Witness was over. The Presenting Officer stated that he did not have any other witness. Thereafter, the Enquiry Officer asked the second party/Workman as to whether the second party/Workman wanted to bring any documents/witness in his defence or he wanted to give any clarification in his defence. The second party/Workman replied that he did not want to bring any documents or witness in his defence. Having stated that he did not want to bring any documents or witness in his defence, the second party/Workman made his submission that “However, I would like to say that letter heads were given to Mr.Jaiswal as per the instructions of Branch Manager and in the presence of Branch Manager and at that time I was not aware that Mr.Jaiswal will misuse the said letter heads for his personal benefits”. The Enquiry Officer thereafter asked the second party/Workman: “Please go through the declaration form of Fidelity and Secrecy and tell whether you have signed such form at the time of joining the Bank?” The second party/Workman replied: “I might have signed but I do not remember”. The Enquiry Officer concluded the enquiry, and further advised the Presenting Officer to submit his Written Arguments on or before 6.12.1999 and the second party/Workman to submit his Written Arguments on or before 13.12.1999.

45. It may be further mentioned that in his statement as MW-1, before this Tribunal, A.K.Thakur, Enquiry Officer, reiterated in detail the proceedings held on 26.11.1999, and further stated that “the Presenting Officer, the second party and I signed at the foot of the Minutes of the Meeting held on 26.11.1999. The Minutes are at pages 6-8 of the Management’s Compilation of Documents dated 22.5.2006. I identify my signature at the foot of the document. I identify the signatures of the Presenting Officer and the second party since they had signed the Minutes in my presence”. As regards the Written Arguments, A.K.Thakur, in his statement as MW-1 before this Tribunal stated: “I say that though the Presenting Officer submitted his Written Arguments in defence of his brief, the second party did not submit his Written Arguments”. It may be further mentioned that in his cross-examination before this Tribunal, the second party/Workman (WW-1) stated: “The proceedings dated 26.11.1999 bears my signature”. In the said cross-examination, the second party/Workman as WW-1 also stated: “The matter was adjourned to 26.11.1999 on my request to the E.O. (Enquiry Officer). On 26.11.1999 my Defence Representative was not present.” In the said cross-examination, the second party/Workman also stated: “It is correct that I had not filed any Written Arguments”. Thus, the version of the second party/Workman as WW-1 in his cross-examination supports the Minutes of the Meeting dated 26.11.1999 which were signed by the second party/Workman and which were also proved in detail by A.K.Thakur as MW-1. As regards the statement made by the second party/Workman as WW-1 in his cross-examination that “It is not true that I said that since my D.R. (Defence Representative) had not come, I would defend myself”, the said statement is evidently not correct because the second party/Workman himself signed the Minutes of the Proceedings held on 26.11.1999 wherein the statement of the second party/Workman has been categorically recorded that “As my D.R. (Defence Representative) has not come, I will defend myself, you may start the

proceedings”. It is also noteworthy that the second party/Workman cross-examined the Management Witness (H.D.Bengali) examined on behalf of the Management before the Enquiry Officer on 26.11.1999.

46. Again, the statement made by the second party/Workman as WW-1 in his cross-examination that “It is not correct to say that I was asked to produce documents and the Witnesses in my defence”, is evidently not correct as the Minutes of the Proceedings held on 26.11.1999 were signed by the second party/Workman himself wherein it is recorded that the second party/Workman stated: “I do not want to bring any witness/documents in my defence.” Similarly, the statement made by the second party/Workman in his cross-examination as WW-1 that “It is not correct to say that the E.O. (Enquiry Officer) directed me to file my Written Arguments”, is evidently not correct as the Minutes of the Proceedings held on 26.11.1999 were signed by the second party/Workman himself wherein the Enquiry Officer recorded: “CSE is also advised to submit his written arguments on or before 13.12. 1999”.

47. After the conclusion of the Enquiry Proceedings, the Enquiry Officer submitted his Report dated 2.3.2000. The said **Enquiry Report** has been duly proved by A.K.Thakur in his statement as MW-1 before this Tribunal, and the same is Ex-M-4 on the record of this Tribunal.

48. **The Disciplinary Authority** sent a **Communication dated 3.3.2000** to the second party/Workman enclosing therewith the Enquiry Findings of the Enquiry Officer as contained in the said Report dated 2.3.2000, and further requiring the second party/Workman to make his submission if any, on the findings of the Enquiry Officer within 7 days of the receipt of the said Communication dated 3.3.2000. It was further stated in the said Communication dated 3.3.2000 that if the Disciplinary Authority would not receive any comment from the second party/Workman within stipulated time, the matter would be dealt with accordingly. The said Communication dated 3.3.2000 is Ex.M-3 on the record of this Tribunal. It is noteworthy that in his cross-examination as WW-1, the second party/Workman stated that “I had received the copy of the Report of the Enquiry Officer alongwith the letter of the Bank dated 3.3.2000 enclosing the copy of the Report dated 2.3.2000”.

49. The second party/Workman did not submit any Representation or Submission as required in the said Communication dated 3.3.2000 against the findings recorded by the Enquiry Officer. In the circumstances, **the Disciplinary Authority (Deputy General Manager, Mumbai City Regional Office, Mumbai)** passed a **reasoned Order dated 26.4.2000** on a consideration of the material on record including the Enquiry Proceedings, and imposed on the second party/Workman the punishment of “Dismissal without Notice with immediate effect”. Copy of the said Order dated April 26, 2000 passed by the Disciplinary Authority imposing the said punishment on the second party/Workman is Ex.M-5 on the record of this Tribunal.

50. The second party/Workman thereafter preferred an **Appeal dated 12.6.2000** before the Appellate Authority. The Appellate Authority fixed 16.3.2001 for personal hearing of the second party/Workman. In the Appeal, during the personal hearing on 16.3.2001, the second party/Workman requested for adjournment of the personal hearing to 26.3.2001 to enable him to be represented by his Defence Representative. The request of the second party/Workman was accepted, and accordingly, the second party/Workman was given personal hearing by the Appellate Authority on 26.3.2001. After giving personal hearing to the second party/Workman and after considering the relevant records of the case, the **Appellate Authority** passed a **reasoned Order dated 12.12.2001** dealing with various contentions raised by the second party /Workman in his Appeal and concurred with the views of the Disciplinary Authority. Copy of the said Order dated 12.12.2001 passed by the Appellate Authority is Ex.M-6 on the record of this Tribunal.

51. From the above narration of facts, it is evident that in the Enquiry Proceedings held against the second party/Workman, he was given reasonable opportunity of being heard. He was given opportunity to produce his Defence Representative and was given adjournments for the said purpose. However, ultimately, the second party/Workman stated that he would himself conduct his case. He cross-examined the Management Witness produced on behalf of the first party/Management before the Enquiry Officer in the Enquiry Proceedings. As regards his defence, the second party/Workman stated before the Enquiry Officer that he did not want to bring any documents or witness in his defence. The second party/Workman however, made his submission in his defence. The Enquiry Officer, thereafter, put one question to the second party/Workman regarding the Declaration Form of Fidelity and Secrecy, and the second party/Workman gave his reply to the said question. The Enquiry Officer, then concluded the enquiry, and further advised the Presenting Officer to submit his Written Arguments on or before 6.12.1999 and the second party/Workman to submit his Written Arguments on or before 13.12.1999. The Presenting Officer submitted his Written Arguments but the second party/Workman did not submit his Written Arguments.

52. The Findings recorded by the Enquiry Officer as contained in Ex.M-4 were sent to the second party/Workman by the Disciplinary Authority alongwith the Communication dated 3.3.2000 (Ex.M-3) requiring the second party/Workman to make his submission in regard to the findings recorded by the Enquiry Officer. However, the second party/Workman did not make any Representation or Submission against the findings recorded by the Enquiry Officer. The Disciplinary Authority thereafter passed the Order dated 26.4.2000 (Ex.M-5) discussing in detail the material on record and imposing on the second party/Workman the punishment of “Dismissal without Notice with immediate effect.”.

53. The second party/Workman thereafter filed Appeal before the Appellate Authority. The Appellate Authority gave personal hearing to the second party/Workman, and thereafter passed an Order dated 12.12.2001 concurring with the views of the Disciplinary Authority. The Appellate Authority in its Order dated 12.12.2001 (Ex.M-6) dealt with various contentions raised on behalf of the second party/Workman in his Appeal.

54. It is thus evident that the Enquiry held against the second party/Workman was fair and proper and in accordance with the Principles of Natural Justice as also the procedure laid down in the Bipartite Settlement.

55. ***Shri M.B. Anchan, learned counsel for the second party/Workman, however, has made various submissions in support of his plea that the enquiry held against the second party/Workman was not fair and proper. The said submissions are being dealt with below:***

56. (1) It is submitted that the Chargesheet dated 17.6.1999 given to the second party/Workman was vague as no date of the alleged incident was mentioned in the chargesheet.

57. It is noteworthy that no such plea was raised on behalf of the second party/Workman in the Statement of Claim or in the Rejoinder filed before this Tribunal. Nothing in this regard was said by the second party/Workman in his Statement as WW-1 before this Tribunal. In the circumstances, such plea cannot be permitted to be raised on behalf of the second party/Workman at the time of arguments.

58. Even otherwise, it has not been shown on behalf of the second party/Workman that any prejudice has been caused to him on account of non-mention of the date of the alleged incident in the Chargesheet. It is further noteworthy that during the Enquiry Proceedings held on 12.11.1999, the Enquiry Officer specifically asked the second party/Workman: "Have you gone through the contents of the chargesheet and understood it?". The second party/Workman replied in the affirmative. It is, thus clear that the second party/Workman fully understood the charges against him, and no plea regarding the Chargesheet being vague was raised on behalf of the second party/Workman. Further, the letter dated 15.6.1999 (Ex.MEX-4 in the Enquiry Proceedings) which has been filed on behalf of the second party/Workman as part of Ex.W-4 before this Tribunal, shows that the second party/Workman fully understood the charges against him. The Statement of Claim and the Rejoinder filed before this Tribunal as also the Statement of the second party/Workman as WW-1 before this Tribunal clearly show that the second party/Workman was clear about the charges against him, and this is why, no plea of the Chargesheet being vague was earlier taken on behalf of the second party/Workman. In the circumstances, the plea raised by Mr.M.B.Anchan, learned counsel for the second party/Workman that the Chargeheet dated 17.6.1999 was vague, cannot be accepted.

59. (2) It is submitted by Mr.M.B.Anchan, learned counsel for the second party/Workman that the departmental enquiry held against the second party/Workman was against the principles of natural justice because the Appointment of the Enquiry Officer and the Presenting Officer was not communicated to him by the Disciplinary Authority. Mr.M.B.Anchan, in this regard refers to the statement made by Mr.A.K.Thakur, MW-1 in his cross-examination before this Tribunal.

60. In reply, Ms. Nandini Menon, learned counsel for the first party/Management submits that the plea sought to be raised by Mr.M.B.Anchan, learned counsel for the second party/Workman has been raised for the first time in the Written Arguments submitted on behalf of the second party/Workman, and no such plea was raised before the Enquiry Officer nor was any such plea raised in the Statement of Claim or in the Rejoinder filed on behalf of the second party/Workman. Even in his Statement as WW-1, the second party/Workman raised no grievance in this regard. In the circumstances, it is not open to Mr.M.B.Anchan, learned counsel for the second party/Workman to raise the said plea on the basis of the statement made by Mr.A.K.Thakur as MW-1 in his cross-examination before this Tribunal. It is submitted that evidence without there being pleadings cannot be accepted. Ms. Nandini Menon has further submitted that in any case, no prejudice whatsoever has been pleaded or proved to the second party/ Workman on account of non-communication of the names of the Enquiry Officer and the Presenting Officer.

61. I have considered the submissions made by the learned counsel for the parties.

A perusal of the Enquiry Proceedings shows that the second party/Workman did not raise any grievance before the Enquiry Officer on account of the alleged non-communication of the Appointment of the Enquiry Officer and the Presenting Officer. Again, no grievance in this regard was raised on behalf of the second party/Workman in the Statement of Claim or in the Rejoinder filed before this Tribunal. There was thus no pleading on behalf of the second party/Workman in regard to the alleged non-communication of the Appointment of the Enquiry Officer and the Presenting Officer. In the absence of any such pleadings on behalf of the second party/Workman, , such plea cannot be permitted to be raised on behalf of the second party/Workman at the time of arguments. As regards the statement of Mr.A.K.Thakur, MW-1 in his cross-examination before this Tribunal, the said statement is as under: "I conducted the enquiry against the workman. I did not give a copy of my Appointment Letter as Enquiry Officer in the matter to the workman but the workman should have been endorsed a copy of that order by the Regional Manager. I am not aware of the fact that chargesheet was served to the workman when he was in Police custody".

62. From a perusal of the above statement, it is evident that Mr.A.K.Thakur, MW-1 has only stated that he did not give a copy of his Appointment Letter as Enquiry Officer in the matter to the second party/Workman but the second party/Workman should have been endorsed a copy of that Order by the Regional Manager. The said statement cannot be interpreted to mean that Mr.A.K.Thakur admitted that Appointment of the Enquiry Officer and the Presenting Officer had not been communicated to the second party/Workman by the Disciplinary Authority. Thus, the above statement made by Mr.A.K.Thakur, MW-1 does not support the plea raised by Mr.M.B.Anchan, learned counsel for the second party/Workman that Appointment of the Enquiry Officer and the Presenting Officer was not communicated to the second party/Workman by the Disciplinary Authority.

63. Even otherwise, it has not been pleaded or proved on behalf of the second party/Workman that any prejudice was caused to him on account of the non-communication of the Appointment of the Enquiry Officer and the Presenting Officer. It is noteworthy that the Enquiry Proceedings continued for three days, and on the first date itself, the second party/Workman who was present before the Enquiry Officer became aware of the identity of the Enquiry Officer as well as the Presenting Officer but the second party/Workman did not raise any grievance in regard to their appointment.

64. In view of the above, the submission made by Mr.M.B.Anchan, learned counsel for the second party/Workman that the Departmental Enquiry held against the second party/Workman was against the Principles of Natural Justice on account of non-communication of the Appointment of the Enquiry Officer and the Presenting Officer cannot be accepted.

65. In this regard, it is pertinent to refer to certain decisions relied upon by Ms. Nandini Menon, learned counsel for the first party/Management in support of her plea that evidence without there being pleadings cannot be considered.

- (i) In *National Textile Corporation Limited v/s. Nareshkumar Badri Kumar Jagad and others, (2011) 12 SCC 695 (paragraphs 12 to 18)*, it has been laid down by their Lordships of the Supreme Court that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. A party has to take proper pleadings and prove the same by adducing sufficient evidence. No evidence can be permitted to be adduced on an issue unless factual foundation has been laid down in respect of the same.
- (ii) In *Union of India v/s. Ibrahim Uddin and another, (2012) 8 SCC 148 (paragraphs 77, 78 and 85.6)*, it has been laid down by their Lordships of the Supreme Court that the Court cannot travel beyond the pleadings as no party can lead the evidence on an issue/point not raised in the pleadings and in case, such evidence has been adduced or a finding of fact has been recorded by the Court, it has to be ignored. It has been emphasized that no evidence is permissible to be taken on record in the absence of the pleadings in that respect. Relief not founded on the pleadings cannot be granted.

66. The above decisions thus support the submissions made by Ms. Nandini Menon, learned counsel for the first party/Management that no pleadings having been made on behalf of the second party/Workman in regard to non-communication of the appointment of the Enquiry Officer and the Presenting Officer, it is not open to the second party/Workman to raise such a plea on the basis of the statement made by Mr.A.K.Thakur, MW-1 in his cross-examination before this Tribunal.

67. Ms. Nandini Menon, further submits that even if it is assumed that the appointment of the Enquiry Officer and Presenting Officer was not communicated to the second party/Workman, the same was merely a procedural irregularity and cannot be termed to be any illegality in the enquiry procedure.

68. In my view, having regard to the facts and circumstances as mentioned above, the alleged non-communication of the Appointment of the Enquiry Officer and the Presenting Officer was a mere procedural irregularity, and the same did not vitiate the Enquiry Proceedings. As noted earlier, the identity of the Enquiry Officer and the Presenting Officer became known to the second party/Workman in any case on the first day of the Enquiry Proceedings when the second party/Workman was present.

69. (3) It is submitted by Mr.M.B.Anchan, learned counsel for the second party/Workman that the second party/Workman was not knowing the procedure of the Departmental Enquiry. The Enquiry Officer did not explain the procedure of Departmental Enquiry. In this regard, Mr.M.B.Anchan, learned counsel for the second party/Workman, refers to the statement made by Mr.A.K.Thakur, MW-1 in his cross-examination before this Tribunal.

70. In reply, Ms. Nandini Menon, learned counsel for the first party/Management submits that the plea sought to be raised by Mr.M.B.Anchan, learned counsel for the second party/Workman has been raised for the first time in the Written Arguments submitted on behalf of the second party/Workman. It is submitted by Ms.Nandini Menon that no such plea has been raised by the second party/Workman in the Statement of Claim or in the Rejoinder filed on behalf of the second party/Workman before this Tribunal. Even in his statement as WW-1, the second party/Workman raised no grievance in this regard. In the absence of any pleadings having been made on behalf of the second party/Workman, it is not open to the second party/Workman to raise the said plea for the first time in the Written Arguments. In the

absence of pleadings, it is not open to the second party/Workman to build a new plea on the basis of the statement made by Mr.A.K.Thakur, MW-1 in his cross-examination. Moreover, the submission proceeds, the second party/Workman has neither pleaded nor proved any prejudice on account of the Enquiry Officer having not explained the procedure of Departmental Enquiry. The second party/Workman never asked the Enquiry Officer to first explain the procedure of Departmental Enquiry and then proceed with the matter.

71. I have considered the submissions made by the learned counsel for the parties.

72. A perusal of the Enquiry Proceedings shows that the second party/Workman never asked the Enquiry Officer to first explain the procedure of Departmental Enquiry and then proceed with the enquiry proceedings. Again, no grievance in this regard was raised on behalf of the second party/Workman in the Statement of Claim or in the Rejoinder filed before this Tribunal. There was thus no pleading on behalf of the second party/Workman in regard to the Enquiry Officer having not explained the procedure of Departmental Enquiry. In the absence of any such pleadings on behalf of the second party/Workman, such plea cannot be permitted to be raised on behalf of the second party/Workman for the first time in the Written Arguments. It is noteworthy that even in his Statement as WW-1, the second party/Workman did not raise any grievance that the Enquiry Officer had not explained the procedure of Departmental Enquiry. It is true that Mr.A.K.Thakur, MW-1 in his cross-examination before this Tribunal stated: "I did not because I was not required to explain to the workman the procedure of enquiry". However, as noted earlier, in the absence of pleadings, the second party/Workman cannot be permitted to raise a new plea for the first time in the Written Arguments on the basis of statement made by Mr.A.K.Thakur, MW-1 in his cross-examination.

Even otherwise, it has not been pleaded or proved on behalf of the second party /Workman that any prejudice was caused to him on account of the Enquiry Officer having not explained the procedure of Departmental Enquiry. It is noteworthy that a perusal of the Enquiry Proceedings shows that the second party/Workman was fully aware of the procedure of Departmental Enquiry, and this is why, no grievance in this regard was raised on behalf of the second party/Workman in the pleadings before this Tribunal or even in his statement as WW-1.

In view of the above, the submission made by Mr.M.B.Anchan, learned counsel for the second party/Workman that the Departmental Enquiry held against the second party/Workman was against the Principles of Natural Justice because the Enquiry Officer did not explain the procedure of Departmental Enquiry, cannot, in my view, be accepted.

73. (4) It is submitted by Mr.M.B.Anchan, learned counsel for the second party/Workman that the second party/Workman was not well aware of the English language. It is submitted that the Enquiry against the second party /Workman was conducted in English, and the second party/Workman's request for holding the Enquiry in Hindi was not considered by the Enquiry Officer. It is submitted that the conduct of Enquiry Proceedings against the second party/Workman in English caused prejudice to the second party/Workman, and the Enquiry Proceedings were thus vitiated. Mr.M.B.Anchan, learned counsel for the second party/Workman has referred to the statement made by Mr.A.K.Thakur, MW-1 in his cross-examination before this Tribunal. Mr.M.B.Anchan, learned counsel for the second party/Workman, in support of his submission, has placed reliance on a decision of the Gauhati High Court in **Abujam Amuba Singh vs State of Manipur and Others, 2000 Labour and Industrial Cases 498.(Gauhati)**.

74. In reply, Ms. Nandini Menon, learned counsel for the first party/Management submits that the plea sought to be raised by Mr.M.B.Anchan, learned counsel for the second party/Workman has been raised for the first time in the Written Arguments submitted on behalf of the second party/Workman. It is submitted by Ms. Nandini Menon, learned counsel for the first party/Management that during the Departmental Enquiry Proceedings which continued on 3 days in the presence of the second party/Workman, the second party/Workman never raised any protest as to the conduct of Enquiry Proceedings in English language nor did he ask for the conduct of Enquiry Proceedings in Hindi. It is, further submitted by Ms. Nandini Menon, that no such plea has been raised by the second party/Workman in the Statement of Claim or in the Rejoinder filed on behalf of the second party/Workman before this Tribunal. Even in his Affidavit filed in lieu of Examination-in-Chief as WW-1 before this Tribunal, the second party/Workman has not raised any grievance in this regard. It is submitted by Ms. Nandini Menon that the second party/Workman cannot be permitted to travel beyond his pleadings and also the evidence led by him. Since neither pleadings have been made nor evidence has been led on behalf of the second party/Workman that he made a request for holding the Enquiry in Hindi and that the same was not considered by the Enquiry Officer, the said plea sought to be raised on behalf of the second party/Workman cannot be considered, and the same is liable to be rejected. It is submitted that in the absence of pleadings, it is not open to the second party/Workman to build a new plea on the basis of the statement made by Mr.A.K.Thakur, MW-1 in his cross-examination. As regards the decision in **Abujam Amuba Singh case (supra)**, relied upon by Mr. M.B. Anchan, learned counsel for the second party/Workman, it is submitted by Ms. Nandini Menon, learned counsel for the first party/Management that the said decision is not applicable to the facts and circumstances of the present case. Ms. Nandini Menon, learned counsel for the first party/Management has further submitted that in any case, no prejudice

whatsoever has been pleaded or proved to the second party/Workman on account of the Enquiry Proceedings having been held in English language.

75. I have considered the submissions made by the learned counsel for the parties.

76. A perusal of the Enquiry Proceedings shows that the second party/Workman did not make any verbal request or request in writing during the course of Enquiry Proceedings that the Enquiry Proceedings be conducted in Hindi. There was thus no occasion for the Enquiry Officer to consider any such alleged request. Again, no grievance in this regard was raised on behalf of the second party/Workman in the Statement of Claim or in the Rejoinder filed before this Tribunal. There was thus no pleading on behalf of the second party/Workman that the request of the second party/Workman for holding Enquiry Proceedings in Hindi was not considered by the Enquiry Officer. In the absence of any such pleadings on behalf of the second party/Workman, such plea cannot be permitted to be raised on behalf of the second party/Workman for the first time in the Written Arguments. It is further noteworthy that even in his statement as WW-1, the second party/Workman did not raise any grievance that his request for holding the Enquiry in Hindi was not considered by the Enquiry Officer. As regards the statement of Mr.A.K.Thakur, MW-1 in his cross-examination, relied upon by Mr.M.B.Anchan, learned counsel for the second party/Workman, it is relevant to note that in his cross-examination, Mr.A.K.Thakur, MW-1 stated as under: "The enquiry was held in English language. The workman never told me that he did not understand English. Moreover, he was explained in Hindi also. This is correct but there is no endorsement of the fact that the workman was explained in Hindi also in the enquiry proceeding". Reading the above statement of Mr.A.K.Thakur, MW-1 in entirety, it is evident that even though the Enquiry Proceedings were held in English language, the second party/Workman was explained in Hindi also. It is further evident from the above statement that the second party/Workman never told the Enquiry Officer that the second party/Workman did not understand English. The above statement of Mr.A.K.Thakur, MW-1 thus does not support the plea sought to be raised by Mr.M.B.Anchan learned counsel for the second party/Workman that the request of the second party/Workman for holding the Enquiry in Hindi was not considered by the Enquiry Officer.

77. Even otherwise, it has not been pleaded or proved on behalf of the second party/Workman that any prejudice was caused to him on account of the Enquiry Proceedings having been held in English language. In fact, a perusal of the Enquiry Proceedings shows that the second party/Workman was fully comprehending the proceedings, and this is why, no grievance in this regard was raised on behalf of the second party/Workman before the Enquiry Officer or in the pleadings before this Tribunal or even in his statement as WW-1.

78. As regards the decision in *Abujam Amuba Singh case (supra)*, relied upon by Mr.M.B.Anchan, learned counsel for the second party/Workman, the Gauhati High Court laid down as under:

".....At any rate the Inquiry Officer at least must enquire from the delinquent officer whether he would like to engage anyone from the department to defend him and when the delinquent is a Govt. servant belonging to the lower echelons of service, he would further be informed that he is entitled under the relevant rules to seek assistance of another Government servant belonging to department to represent him. If after this information is conveyed to the delinquent Government servant, he still chooses to proceed with the inquiry without obtaining assistance, one can say there is substantial compliance with the rules. That is what has happened in this particular case. The petitioner herein read only upto Class VIII and that also in Manipuri language and the enquiry was conducted by the authority in English. So, it can be very well seen that the petitioner suffered prejudice on this ground also."

79. The above decision thus lays down that the Enquiry Officer must enquire from the Delinquent Officer as to whether he would like to engage any Defence Representative. If the Delinquent Officer has been so informed and he still chooses to proceed with the enquiry without obtaining assistance, there would be substantial compliance with the Rules.

80. Applying the above principles to the present case, it will be noticed that in the present case, the Enquiry Officer asked the second party/Workman as to whether he wanted to be defended by any Defence Representative. When the second party/Workman replied in the affirmative and stated that he wanted to be defended by Defence Representative, the Enquiry Officer gave adjournments to the second party/Workman to bring his Defence Representative. Further, the second party/Workman on 26.11.1999 stated that as his Defence Representative had not come, he would defend himself and the proceedings be started. Thus, in view of the principles laid down in the above decision, there was no flaw in the Enquiry Proceedings against the second party/Workman.

81. The above decision further lays down that the Petitioner in the said case "read only upto Class VIII and that also in Manipuri language and the enquiry was conducted by the Authority in English" and, therefore, the Petitioner in that case "suffered prejudice on this ground also". Thus, in the above case, there was material on record to indicate that the petitioner in the said case read only upto Class VIII and that also in Manipuri language. In the present case, it is noteworthy that the second party/Workman was working as a Cashier-cum-Clerk in Dena Bank. The second party/Workman was present throughout the Enquiry Proceedings but never raised any protest that he did not understand

English language nor did he make any request for holding the Enquiry Proceedings in Hindi. Even before this Tribunal, no pleadings were made on behalf of the second party/Workman raising any such grievance. Even in his statement as WW-1, the second party/Workman did not raise any such plea. It is thus evident that the second party/Workman fully comprehended the Enquiry Proceedings as conducted, and he was not having any grievance on account of the Enquiry Proceedings being held in English language. Moreover, in the statement of Mr.A.K.Thakur, MW-1 in his cross-examination, relied upon by Mr.M.B.Anchan, learned counsel for the second party/Workman, Mr. A.K.Thakur, MW-1 stated that the second party/Workman was explained in Hindi also. Thus, the proposition laid down in the above decision of the Gauhati High Court regarding conduct of Enquiry Proceedings in English and consequent prejudice to the Petitioner in the said case, is not applicable to the facts and circumstances of the present case.

82. In view of the above discussion, the submission made by Mr.M.B.Anchan, learned counsel for the second party/Workman that the request of the second party/Workman for holding the Enquiry in Hindi was not considered by the Enquiry Officer, cannot, in my view, be accepted.

83. (5) It is submitted by Mr.M.B.Anchan, learned counsel for the second party/Workman that the Enquiry was not held in presence of the second party/Workman and the procedure followed in the Enquiry was against the Principles of Natural Justice. In this regard, Mr.M.B.Anchan, learned counsel for the second party/Workman refers to the averments made in paragraph 4 of the Statement of Claim, the relevant portion whereof is as under: “.....The Workman further submits that the enquiry proceedings were not held in his presence. He submits that the enquiry proceedings were held in the Conference Hall of the Bank. There was a big table for Conferences and Meetings. The Workman submits that he himself, the Presenting Officer and the Enquiry Officer were sitting at the corner of the table. On the other end of the table Mr.Bengali, the Vigilance Officer and the witness of the Bank were seated. The Workman submits that Mr.Bengali dictated the enquiry proceedings to the Typist. Thereafter the Workman's signature were taken without explaining to him the proceedings. The Workman submits that the enquiry proceedings were dictated by Mr.Bengali to the Typist and not by the Enquiry Officer. The Workman submits that the enquiry was not held properly”.

84. Mr.M.B.Anchan, learned counsel for the second party/Workman refers to similar averments made in paragraph 5 of the Rejoinder filed on behalf of the second party/Workman in the present Reference. Mr.M.B.Anchan further refers to the averments made in paragraph 4 of the Affidavit of the second party/Workman as WW-1 filed in lieu of Examination-in-Chief wherein averments as made in paragraph 4 of the Statement of Claim, quoted above, have been reiterated.

85. In reply, Ms. Nandini Menon, learned counsel for the first party/Management submits that the averments made in paragraph 4 of the Statement of Claim which are reiterated in paragraph 5 of the Rejoinder as well as in paragraph 4 of the Affidavit of the second party/Workman as WW-1 filed in lieu of Examination-in-Chief, are self-contradictory. It is submitted that on the one hand, the second party/Workman asserts that the Enquiry Proceedings were not held in his presence, and on the other hand, he admits his presence at the place where the Enquiry was held and gives description as to how the Enquiry was allegedly held by the Enquiry Officer. It is submitted that the second party/Workman was throughout present in the Enquiry Proceedings and he never raised any objection as is sought to be raised in paragraph 4 of the Statement of Claim as noted above. It is further submitted that a perusal of the Enquiry Proceedings, which are substantiated by the Affidavit of A.K.Thakur, Enquiry Officer (MW-1) filed before this Tribunal in lieu of Examination-in-Chief, clearly shows that the proceedings were throughout being conducted by A.K.Thakur, Enquiry Officer. It was he who dictated the Enquiry Proceedings which were signed by him as Enquiry Officer, by the Presenting Officer and by the second party/Workman. Mr.Bengali was only examined as a witness on behalf of the first party/Management on 26.11.1999, and the said witness was also cross-examined by the second party/Workman. Ms. Nandini Menon also refers to the cross-examination of A.K.Thakur, Enquiry Officer before this Tribunal wherein he categorically denied that Mr.Bengali, Vigilance Officer dictated the proceedings.

86. I have considered the submissions made by the learned counsel for the parties.

87. The submission made by Mr. M.B. Anchan, learned counsel for the second party/Workman that the Enquiry Proceedings were not held in the presence of the second party/Workman, cannot, in my view, be accepted in view of the contradictory averments made in paragraph 4 of the Statement of Claim, as quoted above, which are reiterated in paragraph 5 of the Rejoinder filed on behalf of the second party/Workman as also in paragraph 4 of the Affidavit filed by the second party/Workman as WW-1 in lieu of Examination-in-Chief. The averments made in paragraph 4 of the Statement of Claim, as noted above, as also in paragraph 5 of the Rejoinder filed on behalf of the second party/Workman and in paragraph 4 of the Affidavit of the second party/Workman filed in lieu of Examination-in-Chief clearly show that even though the second party/Workman asserted that the Enquiry Proceedings were not held in his presence but he contradicted himself by giving a description of the Conference Hall in which the Enquiry Proceedings were allegedly held and the manner in which the Enquiry Proceedings were allegedly held at the said place. In fact, he has admitted his presence in the Enquiry Proceedings in the averments made in paragraph 4 of the

Statement of Claim, as noted above, as also in paragraph 5 of the Rejoinder filed on behalf of the second party/Workman and in paragraph 4 of the Affidavit of the second party/Workman filed in lieu of Examination-in-Chief.

88. Moreover, as discussed in the earlier part of this Award Part-I, the second party/Workman was present on all the three dates on which the Enquiry was held, and he signed the Enquiry Proceedings on each of such dates. It is, further noteworthy that on none of the three dates, the second party/Workman ever raised any such objection before the Enquiry Officer as is being sought to be raised in paragraph 4 of the Statement of Claim as noted above. In fact, a perusal of the Minutes of the Enquiry Proceedings, as discussed in detail earlier, which are substantiated by the averments made in the affidavit of A.K.Thakur, Enquiry Officer (MW-1) filed in lieu of Examination-in-Chief, shows that the Enquiry Proceedings were being conducted by A.K.Thakur, Enquiry Officer, and he was putting questions to the Presenting Officer as well as to the second party/Workman and was granting adjournments to the second party/Workman to bring his Defence Representative. Mr.H.D.Bengali merely appeared as a witness on behalf of the Management whose statement was recorded before the Enquiry Officer.

89. In the circumstances, the submissions made by Mr.M.B.Anchan, learned counsel for the second party/Workman on the basis of the averments made in Paragraph 4 of the Statement of Claim, cannot, in my opinion, be accepted.

90. (6) Mr. M.B. Anchan, learned counsel for the second party/Workman submits that the second party/ Workman had denied the charges leveled against him in the Chargesheet. It is submitted that the case of the second party/Workman before the Enquiry Officer was that he had given the letter heads to Mr. Pramod Jaiswal on the instructions of the Branch Manager, Mr. Ingle. Mr. Ingle was the crucial witness. In the Enquiry, the second party/Workman's statement was not contradicted by examining Mr.Ingle. His statement was, therefore, unchallenged in the Enquiry. In view of non-examination of Mr.Ingle who was a crucial witness, the Enquiry against the second party/Workman was vitiated being against the Principles of Natural Justice. Mr.M.B.Anchan, learned counsel for the second party/Workman has placed reliance on a decision of the Calcutta High Court in **GolamRasul vs. Public Service Commission, West Bengal and others, 1963 II LLJ 174.(Calcutta)**

91. In reply, Ms. Nandini Menon, learned counsel for the first party/Management submits that the first party/Management examined in the Enquiry Proceedings Mr. H.D. Bengali who had investigated the case. The second party/Workman cross-examined the said witness H.D.Bengali. The first party/Management closed its evidence after the evidence of the witness Mr.H.D.Bengali was complete. Thereafter, the Enquiry Officer asked the second party/Workman as to whether he wanted to bring any documents /witness in his defence or he want to give any clarification in his defence. The second party/Workman specifically stated that he did not want to bring any witness/documents in his defence. However, the second party/Workman made his submission that letter heads had been given to Mr. Pramod Jaiswal as per the instructions of the Branch Manager and in the presence of Branch Manager, and that he was not aware that Pramod Jaiswal would misuse the said letter heads for his personal benefits. Ms. Nandini Menon submits that the second party/Workman thus admitted having handed over the letter heads to Pramod Jaiswal. As regards his submission that the letter heads were given by him to Pramod Jaiswal as per the instructions of the Branch Manager and in the presence of the Branch Manager, the second party/Workman did not lead any oral or documentary evidence to substantiate his submissions. The second party/Workman did not even examine himself as a witness to prove his case. In the circumstances, the submission proceeds, there was no occasion for the first party/Management to examine Mr. Ingle to contradict any statement of the second party/Workman, as submitted by the learned counsel for the second party/Workman. As the second party/Workman did not give any statement as a witness, there was no question of any such alleged statement going unchallenged in the Enquiry, as submitted by the learned counsel for the second party/Workman. It is further submitted by Ms. Nandini Menon, learned counsel for the first party/Management that in case the second party/Workman so desired, it was open to him to make request before the Enquiry Officer for summoning Mr. Ingle, but no such request was ever made by the second party/Workman before the Enquiry Officer. It is submitted by Ms. Nandini Menon, learned counsel for the first party/Management that the decision in **Golam Rasulcase (supra)**, relied upon by Mr. M.B. Anchan, learned counsel for the second party/Workman, is not applicable to the facts and circumstances of the present case.

92. I have considered the submissions made by the learned counsel for the parties.

93. As noted in detail earlier, the first party/Management on 26.11.1999 examined H.D.Bengali in support of its case. After the examination-in-chief of H.D.Bengali was over, the Enquiry Officer asked the second party/Workman as to whether he wanted to cross-examine the said Management Witness H.D.Bengali. The second party/Workman replied in the affirmative and stated that he wanted to cross-examine the said Management Witness. The Enquiry Officer, thereupon permitted the second party/Workman to cross-examine the said Management Witness. After the cross-examination of the said Management Witness by the second party/Workman, the Presenting Officer stated that he did not have any other witness. Thereafter, the Enquiry Officer asked the second party/Workman as to whether the second party/Workman wanted to bring any documents/Witness in his defence or he wanted to give any clarification in

his defence. The second party/Workman replied that he did not want to bring any documents or witness in his defence. Having stated that he did not want to bring any documents or witness in his defence, the second party/Workman made his submission that “However, I would like to say that letter heads were given to Mr.Jaiswal as per the instructions of Branch Manager and in the presence of Branch Manager and at that time I was not aware that Mr.Jaiswal will misuse the said letter heads for his personal benefits”.

94. Even though the second party/Workman made the aforesaid submission before the Enquiry Officer but he did not lead any evidence, oral or documentary, to substantiate his aforesaid submission. The second party/Workman did not even examine himself before the Enquiry Officer to prove his submission regarding the handing over of the letter heads to Pramod Jaiswal as per the instructions of the Branch Manager and in the presence of Branch Manager. As the second party/Workman did not make any statement as a witness in the Enquiry Proceedings, there was no question of the first party/Management contradicting any alleged statement of the second party/Workman by examining the Branch Manager Mr. Ingle. It is further noteworthy that it was open to the second party/Workman to make prayer before the Enquiry Officer for summoning the Branch Manager Mr.Ingle in case the second party/Workman considered the evidence of Mr.Ingle to be crucial for his defence.

95. As regards the decision of the Calcutta High Court in **Golam Rasul case (supra)**, the relevant facts were that the Petitioner in the said case was served with the chargesheet on 23.11.1959. The Petitioner showed cause to the charges in writing, on 16.12.1959, denying the charges levelled against him. At the end of his letter showing cause he wrote as follows; “..... I beg to add that Mr.J.C.Ghose, Deputy Secretary of the Public Service Commission, may kindly be asked to appear at the enquiry as I may have to examine him on certain matters”. However, at the enquiry, Mr.J.C.Ghose was not produced as a witness as the Petitioner had prayed for. In the circumstances, the Calcutta High Court held as under:

“Mr.Roy lastly argued that the petitioner was denied natural justice in the sense that he was not allowed to examine Mr.Ghose, who had been cited by him as a witness. This is the most substantial of all the points argued in this rule. The law is quite clear that if a witness, cited by a person facing a disciplinary enquiry, is under the control of the disciplinary authority and if the evidence of the witness is material for the purposes of the enquiry, then the authority should arrange for the production of that witness at the enquiry. In this case Mr.Ghose had been cited as a witness by the petitioner. Mr.Ghose was not unwilling to depose, if the enquiring officer found his examination necessary. Curiously enough, the enquiring officer did not come to any conclusion that the examination of Mr.Ghose should not be necessary because he was not a material witness. He, however, escaped examining Mr.Ghose on the untrue pretext that he had not been cited as a witness at all. The petitioner’s grievance that at the enquiry he was not afforded proper opportunity to defend himself, in the sense that a witness cited by him was not examined, must succeed.”

96. It will thus be noticed that in **Golam Rasul case (supra)**, the Petitioner, i.e. the delinquent employee specifically cited Mr.J.C.Ghose for being examined as a witness but still Mr.J.C.Ghose was not examined nor did the Enquiry Officer record any conclusion that the examination of Mr.Ghose should not be necessary because he was not a material witness. In the circumstances, it was held that the Petitioner in the said case was not afforded proper opportunity to defend himself since a witness cited by him was not examined.

97. In the present case, as noted above, the second party/Workman never made any prayer before the Enquiry Officer for examining Mr.Ingle as a witness. In fact, the second party/Workman specifically stated before the Enquiry Officer that he did not want to bring any witness/documents in his defence. As Mr.Ingle was never cited as a witness by the second party/Workman, there was no occasion to examine Mr.Ingle as a witness, and there was thus no denial of reasonable opportunity to defend to the second party/Workman. The above decision in **Golam Rasul case (supra)**, is, therefore, not applicable to the facts and circumstances of the present case.

98. Hence, the submission of Mr.M.B.Anchan, learned counsel for the second party/Workman that the Enquiry against the second party/Workman was vitiated on account of non-examination of Mr. Ingle, cannot, in my view, be accepted.

99. In view of the above discussion, I hold that the enquiry held against the second party/Workman was fair and proper and in accordance with the principles of natural justice as also the procedure laid down in the Bipartite Settlement. Issue No.1 is decided accordingly.

100. **ISSUE NO.2:**

As noted earlier, Issue No.2 is as to “Whether the findings of the Enquiry Officer are perverse?”.

101. As seen earlier, the charge against the second party/Workman was that “While working as a Cashier-cum-Clerk at our Goldeval Branch during the period 30.7.1996 to 2.6.1999, you had handed over the letter heads of our Goldeval Branch to one Shri Pramod Sitaram Jaiswal for misusing it for fraudulent purposes. Shri Jaiswal got the Certificate of Bank Financial Guarantee typed on the said Bank’s letter head outside the premises of the Bank and he forged the

signature of the Branch Manager. He misused it thereafter to borrow the funds to the tune of Rs.10.00 crores in a fraudulent manner”.

102. Before proceeding to deal with the submissions made by the learned counsel for the parties in regard to the aforesaid Issue No. 2, it is pertinent to refer to the relevant **material on record** in this regard and the findings recorded by the Enquiry Officer on the basis of such material.

103. During the Enquiry Proceedings, the first party/Management filed various documents and also examined H.D. Bengali as a witness. H.D. Bengali, Management Witness proved the documents filed on behalf of the first party/Management. Documents Ex.MEX-1 to Ex. MEX-5 filed on behalf of the first party/Management, which were proved by the Management Witness H.D.Bengali, have been filed on behalf of the second party/Workman before this Tribunal as part of Ex.W-4.

104. Document MEX-1 filed on behalf of the first party/Management during the Enquiry Proceedings was a Certificate issued by Goldeval Branch of Dena Bank showing the period when the second party/Workman remained posted at Goldeval Branch.

105. Document Ex.MEX-2 filed on behalf of the first party/Management during Enquiry Proceedings was Account Opening Form of Om Sai Shobha, Proprietor whereof was Tulsiram Ramchandra Agrawal in respect of Current Account No.15009 in Goldeval Branch of Dena Bank. As already noted earlier, the original of the said Account Opening Form was summoned by this Tribunal whereupon Laxman Khaparde appeared as a witness and stated in his examination-in-chief that “Ex.W-7 is the Account Opening Form of Om Sai Shobha of whose proprietor is Tulsiram Ramchandra Agrawal. Ex.W-7(A) is photo copy of Ex.W-7”. It may be mentioned that Ex.W-7 is a copy of the same document as Ex.MEX-2 filed on behalf of the first party/Management during the Enquiry Proceedings. A perusal of Ex.MEX-2 shows that the second party/Workman introduced the said T.R.Agrawal stating that he knew the said person for a long time.

106. Document Ex.MEX-3 filed on behalf of the first party/Management during the Enquiry Proceedings was photocopy of the Financial Bank Guarantee fabricated on the letter head of Goldeval Branch of Dena Bank in favour of the aforesaid T.R.Agrawal for Rs.10 crores.

107. Document Ex.MEX-4 filed on behalf of the first party/Management during the Enquiry Proceedings was a statement made by the second party/Workman wherein the second party/Workman, inter-alia, stated that he was acquainted with Shri Jaiswal for 6-7 years, and that he gave 4-5 letter heads to Shri Jaiswal in the presence of Branch Manager, and that it was a mistake committed by him (second party/Workman).

108. Document Ex.MEX-5 filed on behalf of the first party/Management during the Enquiry Proceedings is again a copy of the Financial Bank Guarantee fabricated in favour of the aforesaid T.R.Agarwal for Rs.10 crores on the letter head of Goldewal Branch of Dena Bank, and at the bottom of the said document Account No.15009 of Om Sai Shobha was mentioned.

109. In his examination as Management Witness before the Enquiry Officer, H.D.Bengali proved the documents filed on behalf of the first party/Management and, inter-alia, explained the contents of the said documents and also gave account of various other relevant facts and circumstances.

110. As noted earlier, the second party/Workman cross-examined the Management Witness H.D. Bengali. In cross-examination, H.D. Bengali stated that “MEX-3 is on Bank’s letter head which is not used by Mr. Dubey but it was used by Mr. Pramod Jaiswal for obtaining finance from one party of Chennai”.

111. Further, as noted earlier, the second party/Workman made his submission before the Enquiry Officer stating that “ However, I would like to say that letter heads were given to Mr.Jaiswal as per the instructions of Branch Manager and in the presence of Branch Manager and at that time I was not aware that Mr.Jaiswal will misuse the said letter heads for his personal benefits”. Thus the second party/Workman in his submission accepted that he gave letter heads to Mr. Pramod Jaiswal. However, the second party/Workman did not produce any evidence, oral or documentary, to prove his defence, inter-alia, regarding letter heads having been given to Mr. Pramod Jaiswal as per the instructions of the Branch Manager and in the presence of Branch Manager. The second party/Workman did not even examine himself as a witness to prove his defence.

112. The Enquiry Officer on a detailed consideration of the oral and documentary evidence produced on behalf of the first party/Management and also the admissions made by the second party/Workman, recorded its findings in its Enquiry Report dated 2.3.2000 and, inter-alia, concluded that the charges levelled against the second party/Workman were proved. The Enquiry Officer, inter-alia, recorded finding that “ by giving blank letter heads to unauthorized person, Charge-Sheeted Employee has violated the declaration and his own fidelity and has established his unfaithfulness to the Bank. His act of giving letter heads to unauthorized person led to creation of fraudulent document through which Bank would have been exposed to heavy financial loss/risk and would have caused considerable damage to the prestige and reputation of the Bank”.

113. In my opinion, the findings recorded by the Enquiry Officer are based on consideration of legal evidence placed before it, and the findings recorded by the Enquiry Officer cannot be said to be perverse or illegal.

114. **Mr. M.B. Anchan, learned counsel for the second party/Workman has however, made the following submissions on this Issue:**

115. (1) It is submitted by Mr.M.B.Anchan, learned counsel for the second party/Workman that the findings recorded by the Enquiry Officer are perverse. It is submitted that the submission made by the second party/Workman in the Enquiry Proceedings was not denied by anybody. Therefore, the Enquiry is vitiated.

116. In reply, Ms. Nandini Menon, learned counsel for the first party/Management submits that the second party/Workman did not lead any evidence, oral or documentary, to substantiate his submission regarding letter heads having been given by him as per the instructions of the Branch Manager and in the presence of Branch Manager. The second party/Workman did not even examine himself as a witness to substantiate his defence. In the circumstances, the submission made by the learned counsel for the second party/Workman is misconceived and cannot be accepted.

117. I have considered the submissions made by the learned counsel for the parties.

118. As noted earlier, the second party/Workman did not lead any oral or documentary evidence to substantiate his defence. The second party/Workman did not even examine himself to prove his defence regarding handing over of the letter heads to Mr. Pramod Jaiswal as per the instructions of the Branch Manager and in the presence of Branch Manager. As the second party/Workman did not make any statement as a witness in the Enquiry Proceedings, there was no question of the first party/Management denying or contradicting any alleged statement of the second party/Workman by examining any witness.

119. Moreover, as noted earlier, the first party/Management filed documentary evidence and examined H.D.Bengali as a witness. On a consideration of the material on record and giving valid reasons, the Enquiry Officer recorded his findings in the Enquiry Report. The findings recorded by the Enquiry Officer cannot, therefore, be said to be perverse, as submitted by the learned counsel for the second party/Workman.

120.. (2) Mr.M.B.Anchan, learned counsel for the second party/Workman submits that the Branch Manager Mr.Ingle was a crucial witness but the first party/Management did not examine Mr. Ingle. It is submitted that the case of the second party/Workman was that the letter heads were handed over by him to Mr. Pramod Jaiswal as per the instructions of the Branch Manager Mr.Ingle and in the presence of Mr.Ingle, therefore, it was incumbent on the part of the first party/Management to examine Mr.Ingle in the Enquiry Proceedings. In view of the non-examination of Ingle, the findings recorded by the Enquiry Officer are without any evidence and the same are perverse. In support of his submissions, Mr.M.B.Anchan, learned counsel for the second party/Workman has relied upon the following decisions:

(i) **Hardwari Lal vs. State of Uttar Pradesh and Others, 2000 I CLR 73 (SC)**

(ii) **Harischandra Pathak vs. Registrar of Co-operative Societies, Madhya Pradesh, 1967 I LLJ 93 (M.P)**

(iii) **Roop Singh Negi vs. Punjab National Bank and Others, 2009 I CLR 160 (SC)**

121. In reply, Ms. Nandini Menon, learned counsel for the first party/Management submits that from a perusal of Ex.MEX-4 filed on behalf of the first party/Management in the Enquiry Proceedings, it was evident that the second party/Workman admitted that he had handed over letter heads to Mr. Pramod Jaiswal. In his submission before the Enquiry Officer also, the second party/Workman submitted that letter heads had been given to Mr. Pramod Jaiswal as per the instructions of Branch Manager and in the presence of Branch Manager and at that time he was not aware that Mr. Pramod Jaiswal would misuse the said letter heads for his personal benefits. Having admitted that the letter heads had been handed over by him to Pramod Jaiswal, it was for the second party/Workman to establish that the handing over of the letter heads to Pramod Jaiswal had been done by him as per the instructions of Branch Manager and in the presence of Branch Manager. However, the submission proceeds, the second party/Workman did not lead any oral or documentary evidence to substantiate his defence. The second party/Workman did not even examine himself as a witness to prove his case. In the circumstances, it is submitted that there was no occasion for the first party/Management to examine Mr.Ingle as a witness. It is further submitted that even otherwise, in case the second party/Workman so desired, it was open to him to make request before the Enquiry Officer for summoning Mr. Ingle but no such request was ever made by the second party/Workman before the Enquiry Officer. It is submitted by Ms. Nandini Menon, learned counsel for the first party/Management that the decisions relied upon by Mr. M.B. Anchan, learned counsel for the second party/Workman are not applicable to the facts and circumstances of the present case.

122. I have considered the submissions made by the learned counsel for the parties.

123. As noted in detail earlier, the first party/Management on 26.11.1999 examined H.D.Bengali. After the examination-in-Chief of H.D.Bengali was over, the Enquiry Officer asked the second party/Workman as to whether he wanted to cross-examine the said Management Witness H.D.Bengali. The second party/Workman replied in the affirmative and stated that he wanted to cross-examine the said Management Witness. The Enquiry Officer, thereupon

permitted the second party/Workman to cross-examine the said Management Witness. After the cross-examination of the said Management Witness by the second party/Workman, the Presenting Officer stated that he did not have any other witness. Thereafter, the Enquiry Officer asked the second party/Workman as to whether the second party/Workman wanted to bring any documents/Witness in his defence or he wanted to give any clarification in his defence. The second party/Workman replied that he did not want to bring any documents or witness in his defence. Having stated that he did not want to bring any documents or witness in his defence, the second party/Workman made his submission that “However, I would like to say that letter heads were given to Mr. Jaiswal as per the instructions of Branch Manager and in the presence of Branch Manager and at that time I was not aware that Mr. Jaiswal will misuse the said letter heads for his personal benefits”.

124. Even though the second party/Workman made the aforesaid submission before the Enquiry Officer but he did not lead any evidence, oral or documentary, to substantiate his aforesaid submission. The second party/Workman did not even examine himself before the Enquiry Officer to prove his submission regarding the handing over of the letter heads to Pramod Jaiswal as per the instructions of the Branch Manager and in the presence of Branch Manager. As the second party/Workman did not make any statement as a witness in the Enquiry Proceedings, there was no question of the first party/Management examining the Branch Manager Mr. Ingle for contradicting any alleged statement of the second party/Workman. The first party/Management proved its case by producing various documents and examining H.D. Bengalias Management Witness. It is further noteworthy that it was open to the second party/Workman to make prayer before the Enquiry Officer for examining the Branch Manager Mr. Ingle in case the second party/Workman considered the evidence of Mr. Ingle to be crucial for his defence. However, the second party/Workman did not make any such prayer before the Enquiry Officer for examining Mr. Ingle as a witness. In the circumstances, the submission made by Mr. M.B. Anchan, learned counsel for the second party/Workman that the enquiry was vitiated on account of non-examination of Ingle cannot, in my opinion, be accepted.

125. In *Hardwarilal case (supra)*, relied upon by Mr. M.B. Anchan, learned counsel for the second party/Workman, the Appellant was a Constable in the Police Department in the State of Uttar Pradesh. On a charge that on the night between 16/17.1.1991 being under the influence of liquor hurled abuses in the Police Station at Constable, Prakashchandra Pandey. Departmental enquiry was initiated against the Appellant. On receipt of Enquiry Report the Disciplinary Authority passed an Order of dismissal. Challenge to that Order by the Appellant before the Public Services Tribunal failed. The Appellant thereafter filed Writ Petition before the High Court. The High Court affirmed the order of the Tribunal. Thereupon the Appellant approached the Supreme Court in appeal. Their Lordships of the Supreme Court held as under:

“Before us the sole ground urged is as to the non-observance of the principles of natural justice in not examining the complainant, Shri Virender Singh, and witness, Jagdish Ram. The Tribunal as well as the High Court have brushed aside the grievance made by the appellant that the non-examination of those two persons has prejudiced his case. Examination of these two witnesses would have revealed as to whether the complaint made by Virender Singh was correct or not and to establish that he was the best person to speak to its veracity. So also, Jagdish Ram, who had accompanied the appellant to the hospital for medical examination, would have been an important witness to prove the state or the condition of the appellant. We do not think the Tribunal and the High Court were justified in thinking that non-examination of these two persons could not be material. In these circumstances, we are of the view that the High Court and the Tribunal erred in not attaching importance to this contention of the appellant.....”

In the circumstances, we are satisfied that there was no proper enquiry held by the authorities and on this short ground we quash the order of dismissal passed against the appellant by setting aside the order made by the High Court affirming the order of the Tribunal and direct that the appellant be reinstated in service.”

126. Their Lordships of the Supreme Court allowed the Appeal of the Appellant and set aside the Order of the High Court affirming the Order of the Tribunal and quashed the Order of Dismissal passed against the Appellant and directed that the Appellant be reinstated in service.

127. From a perusal of the above-quoted paragraphs of the judgement of the Supreme Court, it is evident that the facts of the said case were different from those of the present case. In the above case, there was no admission by the Appellant regarding the alleged incident. Therefore, it was necessary for the Department to prove the charge against the Appellant by examining the witness who could have proved the alleged incident. As the witnesses were not examined, the charge against the Appellant was not established and in the circumstances, their Lordships of the Supreme Court quashed the Order of Dismissal.

128. In the present case, the second party/Workman has himself admitted that he had handed over the letter heads to Pramod Jaiswal. As regards the submission of the second party/Workman that the handing over of the letter heads was done by him as per the instructions of the Branch Manager and in the presence of Branch Manager, it was for the second party/Workman to lead evidence, oral and documentary, to substantiate his defence. The second party/Workman failed

to lead any evidence nor did he examine himself as a witness to prove his defence. In the circumstances, there was no occasion for the first party/Management to examine Mr.Ingle, Branch Manager.

129. The decision in *Hardwarilal case (supra)* is thus not applicable to the facts and circumstances of the present case.

130. In *HarischandraPathak case (supra)*, relied upon by Mr.M.B.Anchan, learned counsel for the second party/Workman, the Petitioner was recruited in the year 1956 as Co-operative and Panchayat Inspector. Subsequently, he was required to work as a Co-operative Extension Officer. At the material time, he was employed on that post in the AmarwaraBlock of Chhindwara District.

131. By an Order dated 17.2.1961, the Collector of Chhindwara suspended the Petitioner and directed that a departmental enquiry be held against him. Assistant Registrar, Co-operative Societies, Chhindwara was appointed as Enquiry Officer by the Collector. Charge-sheet and additional charge-sheet were given to the Petitioner. The Enquiry Officer submitted his report and thereafter an additional report to the Registrar of Co-operative Societies. Agreeing with the conclusions of the Enquiry Officer, the Registrar issued to the Petitioner a show-cause notice. The Petitioner submitted his detailed reply. Thereafter, the Registrar passed the final order dated 27.2.1963 holding that only charges 1 and 4 and the additional charges were proved against the Petitioner and inflicting upon the Petitioner a separate punishment for fault. Being aggrieved by that order, the Petitioner preferred an appeal to the State Government, which referred the matter to the State Public Service Commission. The Commission held that while the charges 1 and 4 were not proved, the additional charge was duly established and the penalty of dismissal was, having regard to the nature of delinquency, merited. As advised by the Public Service Commission, the State Government rejected the Petitioner's appeal. The Petitioner filed a Writ Petition before the Madhya Pradesh High Court against the said order dated 27.2.1963 whereby the Registrar of Co-operative Societies, Madhya Pradesh dismissed the Petitioner from service.

It is relevant to note that additional charge against the Petitioner was as under:

"On 26th June 1961 at Chhindwara from the Office of the Assistant Registrar, Co-operative Societies, Chhindwara, you have written a letter in your own handwriting and signature with a draft-news item or irregularities in the Amarwara Block for publication to Sri Sharma which was later on published in Hindi newspaper "Kissan Raj" dated 2 July 1961. Thus you have acted in contravention of rules 8(2) and 19 of the Madhya Pradesh Government Servants (Conduct) Rules, 1969".

132. The Petitioner disputed that the original letter dated 26 June 1961, which was belatedly shown to him, was in his handwriting and requested the enquiry officer to permit him to engage a lawyer to cross-examine the handwriting expert, C.T.Sarwate, as provided in general book circular I-13 (15). Admittedly, the petitioner was not permitted to engage a lawyer for that purpose. It is, however, explained that, since a lawyer had not been engaged for the State, the matter was in the discretion of the enquiry officer and he exercised it properly because the petitioner himself was able to competently cross-examine the expert.

133. The Madhya Pradesh High Court held as under:

"It is true that a public servant has no absolute right to be represented by a lawyer in a departmental enquiry on charges levelled against himself, but, as pointed out by the Calcutta High Court in NripendraNathBagchi v. Chief Secretary, Government of West Bengal (1961-II L.L.J.312) the denial of the assistance of a lawyer may in certain circumstances amount to denial of a reasonable opportunity within the meaning of Art.311(2) of the Constitution. In our opinion, the petitioner should have been allowed to be assisted by a lawyer for the purpose of cross-examining the handwriting expert. Even so, we do not consider that, in the circumstances of this case, the refusal of the request for the assistance of a lawyer amounts to a denial of a reasonable opportunity under Art.311(2)."

134. Another contention raised before the Madhya Pradesh High court was that the additional charge against the petitioner was not established because there was no evidence to show that the petitioner communicated the offending information to the Press. The Madhya Pradesh High Court accepted the said contention and held as under:

"Since admittedly there is in this case no evidence to show that the petitioner communicated the offending information to the press, the conclusion that the additional charge was established and the punishment therefore awarded to the petitioner are liable to be quashed by certiorari. Vide Union of India v. H.C.Goel (1964-I L.L.J.38)."

The Madhya Pradesh High Court accordingly allowed the Writ Petition and quashed the impugned orders.

135. The facts of *HarischandraPathak case (supra)* were thus different from those of the present case. In *HarischandraPathak case (supra)*, one of the questions was as to whether the petitioner should have been allowed to be assisted by a lawyer for the purpose of cross-examining the handwriting expert. In the present case, as noted earlier, the Enquiry Officer gave adjournments to the second party/Workman to bring his defence representative but the second

party/Workman failed to bring his defence representative. Ultimately, the second party/Workman himself said that as his defence representative had not come, he would defend himself and the proceedings be started. Thus, in the present case, there was no denial of opportunity to the second party/Workman to bring his defence representative.

136. It is further noteworthy that in *HarischandraPathak case (supra)*, the Madhya Pradesh High Court noted that there was no evidence to show that the petitioner communicated the offending information to the Press. On the other hand, in the present case, the second party/Workman has himself admitted that he had handed over the letter heads to PramodJaiswal. As regards the submission of the second party/Workman that the handing over of the letter heads was done by him as per the instructions of the Branch Manager and in the presence of Branch Manager, it was for the second party/Workman to lead evidence, oral and documentary, to substantiate his defence. The second party/Workman failed to lead any evidence nor did he examine himself as a witness to prove his defence.

137. The decision in *HarischandraPathak case (supra)* is thus not applicable to the facts and circumstances of the present case.

138. In *Roop Singh Negi case (supra)*, the Appellant (Roop Singh Negi) was working as a Peon in the Respondent Bank (Punjab National Bank). He was dismissed from service for misconduct duly proved in disciplinary enquiry. Before that in the criminal proceedings, he was discharged by the Court for the same offence based on same allegations. The Appellate Authority dismissed his Appeal. His Writ Petition was also dismissed by the High Court. Thereupon, he filed Appeal before the Supreme Court with Special Leave.

139. Their Lordships of the Supreme Court allowed the appeal filed by the Appellant, set aside the judgement of the High Court and directed for reinstatement of the Appellant with full back wages. Their Lordships observed as under:

“Indisputably , a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the Enquiry Officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. Appellant being an employee of the bank, the said confession should have been proved. Some evidence would have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the Enquiry Officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.”

140. The facts of *Roop Singh Negi case (supra)*, were thus different from those of the present case. In the present case, the Enquiry Officer has submitted his enquiry report on the basis of the evidence led during Enquiry Proceedings. The Enquiry Officer has not relied upon any report of the Investigating Officer submitted pursuant to First Information Report or on any confessional statement made before the Police. The decision in *Roop Singh Negi case (supra)* is, therefore, not applicable to the facts and circumstances of the present case.

141. (3) Mr.M.B.Anchan, learned counsel for the second party/Workman refers to the Judgement and Order dated 21.11.2012 passed by the Additional Chief Metropolitan Magistrate, 19th Court, Esplanade, Mumbai passed in the Criminal Case being No. 1818/P/2000, filed against the second party/Workman herein (D.R.Dubey) and others under Section 120 B read with Sections 381, 465, 467, 468, 471, 409 and 511 of the Indian Penal Code on the ground that the accused persons entered into criminal conspiracy in Mumbai city between 11.5.1999 to 16.6.1999 to commit theft of letter heads of Dena Bank and to prepare Guarantee Letter, by using the same for Rs.10 crores and to forge signature of the Bank Officers etc. and use the same as genuine one with knowledge and then to cheat the concerned Bank and other persons if possible and thus, the accused persons then succeeded to do so and cheated Dena Bank, Goldewal Branch, Mumbai. By the said Judgement and Order dated 21.11.2012, the second party/Workman herein (D.R.Dubey) and 2 others were acquitted of the offence punishable under Sections 120 B read with Sections 381, 465, 467, 468, 471, 409 and 511 of the Indian Penal Code vide Section 284 (1) of the Code of Criminal Procedure. It is submitted by Mr.M.B.Anchan, learned counsel for the second party/Workman that in the present dispute in the Reference and in the aforesaid Criminal Trial, set of facts, charges, evidence and witnesses were the same, and in view of the acquittal in the Criminal Case, the Dismissal of the second party/Workman consequent to the Departmental Enquiry was illegal and unjustified.

142. Shri M.B. Anchan, learned counsel for the second party/Workman has placed reliance on decision of the Supreme Court in *G M Tank vs State of Gujarat and Others, 2006 Supreme Court Cases (L & S) 1121 (Head Note; paras 30 and 31)*.

143. In reply, Ms. Nandini Menon, learned counsel for the first party/Management submits that mere acquittal of the second party/Workman in the Criminal Case would not render the Departmental Proceedings and the consequent Punishment awarded to the second party/Workman illegal or unjustified. It is submitted that it is trite law that the standard of proof which is required in a departmental enquiry is completely different from the standard of proof which is required in a criminal trial. The standard of proof that is required in a departmental enquiry is that of preponderance of probabilities and not proof beyond reasonable doubt, whereas in a criminal trial, strict proof is required to establish charges against the accused since a criminal trial involves personal liberty of the accused. It is, further submitted that in the present case, the disciplinary action against the second party/Workman, concluding with his dismissal, was completed much before the judgement and order in the criminal case.

144. Ms. Nandini Menon, learned counsel for the first party/Management has relied upon a decision of the Supreme Court in *Divisional Controller, Karnataka State Road Transport Corporation vs. M.G. Vittal Rao, (2012) 1 SCC 442*.

145. I have considered the submissions made by the learned counsel for the parties.

146. In order to appreciate the submissions made by the learned counsel for the parties, it is necessary to consider the legal position regarding the effect of acquittal by Criminal Court on the Departmental Proceedings and the consequent Punishment awarded to the delinquent employee.

147. In *G M Tank case (supra)*, relied upon by Mr. M.B. Anchan, learned counsel for the second party/Workman, the charge against the Appellant was that the movable and immovable properties of the Appellant were disproportionate to his known source of income. The Anti-Corruption Bureau carried out an investigation against the Appellant and submitted a report and on the basis of the said report, a chargesheet dated 20.2.1979 was issued alleging that the Appellant had illegally accumulated the excess income by way of gratification. The Appellant submitted his explanation and denied the allegations as well as charges made in the chargesheet. Departmental enquiry was ordered and as per departmental enquiry report dated 31.3.1980, the Appellant was found guilty of the charge. The Respondent by order dated 21.10.1982 passed an order of dismissal from the service as punishment. The Appellant filed a Writ Petition before the High Court which was dismissed by the Learned Single Judge. Thereupon, the Appellant filed Letters Patent Appeal which was also dismissed by the Division Bench.

148. The Director of Anti-Corruption Bureau had entrusted the enquiry to the Police Inspector, Anti-Corruption Bureau. The Police Inspector submitted an enquiry report on 8.9.1979. On the basis of the said report, a criminal complaint was lodged against the Appellant in Special Case No. 6 of 1987 before the Special Judge, Kachchh at Bhuj for the alleged offence punishable under Section 5(1) (e) read with Section 5(2) of the Prevention of Corruption Act, 1947. The Special Judge had honourably acquitted the Appellant of the offence punishable under Section 5(1) (e) read with Section 5(2) of the Act by holding that the prosecution had failed to prove the charges levelled against the Appellant and thus the Appellant could not be held to be guilty of the said offence.

149. Their Lordships of the Supreme Court allowed the Appeal filed by the Appellant and held as under:

“30. The judgments relied on by the learned counsel appearing for the respondents are distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the criminal court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts, namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer Mr. V.B. Raval and other departmental witnesses were the only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

31. In our opinion, such facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof

would not be applicable in the instant case. Though the finding recorded in the domestic enquiry was found to be valid by the courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony case will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed.”

150. In this case, their Lordships of the Supreme Court have thus emphasized that the departmental proceedings and the criminal proceedings were “based on identical and similar set of facts and the charge in a departmental case against the Appellant and the charge before the Criminal Court are one and the same”. It is further emphasized that “charges, evidence, witnesses and circumstances are one and the same”. It is further pointed out that the “facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference”.

151. In ***Divisional Controller Karnataka State Road Transport case (supra)***, relied upon by Ms. Nandini Menon, learned counsel for the first party/Management, the Respondent-Employee while working as Helper in the Appellant Corporation in 1986 was subjected to disciplinary proceedings by chargesheet dated 4.2.1987 which contained the article of charges mainly on the allegations that on 3.10.1986 the Respondent stayed back beyond his duty hours at his place of employment i.e. Divisional Workshop and opened the door of the Blacksmith Section with the aid of a duplicate key and pulled the gas cylinder trolley and equipment from Blacksmith Section to the Cash Room alongwith 4 other employees of the Appellant Corporation and opened the inner door of the Cash Room by cutting the padlock and used the gas cylinder equipment for committing the theft from the cash chest.

152. The Divisional Traffic Officer was appointed as the Enquiry Officer by the Disciplinary Authority by order dated 11.11.1993 to enquire into the charges levelled against the Respondent in the Disciplinary Proceedings. On the basis of the material produced on behalf of the Management, the Enquiry Officer found the charges levelled against the Respondent proved and accordingly the enquiry report was filed. The Disciplinary Authority after considering the material on record, concurred with the findings recorded by the Enquiry Officer and after completing the legal formalities, imposed the punishment of dismissal of the Respondent from service w.e.f. 14.2.1997.

153. The Respondent raised the Industrial Dispute. Reference was made to the Labour Court. The Labour Court gave its Award dated 17.2.2005 upholding the action taken by the Appellant Corporation. The Respondent, thereupon filed Writ Petition before the High Court. The learned Single Judge modified the Order of Dismissal into Order of Termination. The Management was directed to pay the terminal benefits since the Respondent had retired from service. The Respondent filed Writ Appeal. The Division Bench, by the Judgement and Order dated 27.10.2009, allowed the Appeal filed by the Respondent quashing the Award of the Labour Court and reversing the Order of the Learned Single Judge in the said case.

154. It may be mentioned that when the Respondent Workman was facing disciplinary proceedings at the same time he had also faced the criminal trial for the offences punishable under Sections 457, 381 read with Section 34 of the Indian Penal Code. The Metropolitan Magistrate convicted the delinquent employee holding him guilty of the said charges and sentenced him with a simple imprisonment for a period of six months and a fine of Rs.500/-. The Respondent Workman filed appeal against the said Order of conviction. However, the Appeal was also dismissed by the Appellate Court by Judgement and Order dated 5.4.1994. The delinquent employee alongwith other co-accused preferred Criminal Revision before the High Court which was allowed by the Judgement and Order dated 9.7.1997. Thus, the High Court acquitted the said delinquent employee of all the charges levelled against him.

155. The Division Bench in allowing the said Appeal, as noted earlier, by the Judgement and Order dated 27.10.2009, evidently relied upon the acquittal of the delinquent employee in the Criminal Case.

156. The Appellant Corporation thereupon filed Appeal before the Supreme Court.

157. Their Lordships of the Supreme Court allowed the said Appeal of the Appellant Corporation and set aside the Judgement and Order of the High Court passed in the Writ Appeal and held that the delinquent employee would be entitled only to the relief granted by the learned Single Judge in the Writ Petition. Their Lordships of the Supreme Court held as under:

11. *The question of considering reinstatement after decision of acquittal or discharge by a competent criminal court arises only and only if the dismissal from services was based on conviction by the criminal court in view of the provisions of Article 311(2)(b) [sic Article 311 (2) second proviso (a)] of the Constitution of India, or analogous provisions in the statutory rules applicable in a case. In a case where enquiry has been held independently of the criminal proceedings, acquittal in a criminal court is of no help. The law is otherwise. Even if a person stood acquitted by a criminal court, domestic enquiry can be held, the reason being that the standard of proof required in a domestic enquiry and that in a criminal case are altogether different. In a criminal case, standard of proof required is beyond reasonable doubt while in a domestic enquiry it is the preponderance of probabilities that constitutes the test to be applied.*

12. *In Nelson Motis v. Union of India, (1992) 4 SCC 711, this Court held: (SCC p.714, para 5)*

“5.....The nature and scope of a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceeding.”

13. In *State of Karnataka v. T.Venkataramanappa*, (1996)6 SCC 455, this Court held that acquittal in a criminal case cannot be held to be a bar to hold departmental enquiry for the same misconduct for the reason that in a criminal trial, standard of proof is different as the case is to be proved beyond reasonable doubt but in the departmental proceeding, such a strict proof of misconduct is not required.

14. In *State of A.P. v. K.Allabakash*, (2000) 10 SCC 177, while dismissing the appeal against acquittal by the High Court, this Court observed as under: (SCC p.177, para 2)

“2.....that acquittal of the respondent shall not be construed as a clear exoneration of the respondent, for the allegations call for departmental proceedings, if not already initiated, against him.”

15. While dealing with a similar issue, a three-Judge Bench of this Court in *Ajit Kumar Nag v. Indian Oil Corpn. Ltd*, (2005)7SCC 764, held as under (SCC p.776, para 11)

“11..... In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused ‘beyond reasonable doubt’, he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of ‘preponderance of probability’.”

16. The issue as to whether disciplinary proceedings can be held at the time when the delinquent employee is facing the criminal trial, has also been considered from time to time. In *State of Rajasthan vs. B.K.Meena*, (1996) 6 SCC 417, this Court while dealing with the issue observed as under : (SCC pp. 422-23, para 14)

“14. It would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be ‘desirable’, ‘advisable’ or ‘appropriate’ to proceed with the disciplinary enquiry when a criminal case is pending on identical charges....The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is that ‘the defence of the employee in the criminal case may not be prejudiced’. This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, ‘advisability’, ‘desirability’ or ‘propriety’, as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case..... One of the contending considerations is that the disciplinary enquiry cannot be – and should not be – delayed unduly. So far as criminal cases are concerned, it is well known that they drag on endlessly where high officials or persons holding high public offices are involved. They get bogged down on one or the other ground. They hardly ever reach a prompt conclusion.....If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage. The interests of administration and good government demand that these proceedings are concluded expeditiously. It must be remembered that interests of administration demand that undesirable elements are thrown out and any charge of misdemeanor is enquired into promptly. *The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements.* The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanour should be continued in office indefinitely i.e. for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest.”

24. *Thus, there can be no doubt regarding the settled legal proposition that as the standard of proof in both the proceedings is quite different, and the termination is not based on mere conviction of an employee in a criminal case, the acquittal of the employee in a criminal case cannot be the basis of taking away the effect of departmental proceedings. Nor can such an action of the department be termed as double jeopardy. The judgment of this Court in Capt. M. Paul Anthony, (1999) 3 SCC 679, does not lay down the law of universal application. Facts, charges and nature of evidence, etc. involved in an individual case would determine as to whether decision of acquittal would have any bearing on the findings recorded in the domestic enquiry.*

32. *The domestic enquiry found the delinquent employee guilty of all the charges. The enquiry report was accepted by the disciplinary authority and there is no grievance on behalf of the respondent workman that statutory provisions/principles of natural justice have not been observed while conducting the enquiry. The disciplinary authority imposed the punishment of dismissal from service which cannot be held to be disproportionate or non-commensurate to the delinquency. The Labour Court after reconsidering the whole case came to the conclusion that the enquiry has been conducted strictly in accordance with law in a fair manner and charges have rightly been proved against the delinquent employee. However, considering the difference in the standard of proof required in domestic enquiry vis-à-vis that applicable to a criminal case, the Labour Court repelled the argument of the respondent workman that once he stood acquitted he was entitled to all reliefs including reinstatement and back wages. The learned Single Judge as well as the Division Bench had simply decided the case taking into consideration the acquittal of the delinquent employee and nothing else.*

158. Thus, in ***Divisional Controller Karnataka State Road Transport case (supra)***, their Lordships of their Supreme Court have laid down that in a case where enquiry has been held independently of the criminal proceedings, acquittal in a Criminal Court is of no help. Even if a person stood acquitted by a Criminal Court, domestic enquiry can be held. The reason is that the standard of proof required in a domestic enquiry and that in a Criminal Case are altogether different. In a Criminal Case, standard of proof required is beyond reasonable doubt while in a domestic enquiry it is the pre-ponderance of probabilities that constitutes the test to be applied. It has been emphasized that acquittal by a Criminal Court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the Service Rules. It has been further emphasized that the standard of proof in both the proceedings is quite different. The acquittal of the employee in a criminal case cannot be the basis of taking away the effect of departmental proceedings. Facts, charges and nature of evidence, etc. involved in an individual case would determine as to whether decision of acquittal would have any bearing on the findings recorded in the domestic enquiry.

159. ***On the basis of the propositions laid down in the above two cases of the Supreme Court, the following principles, amongst others, may be deduced:***

- (1) Mere acquittal of the delinquent employee by a Criminal Court would not take away the effect of dismissal order passed by the employer as a result of departmental enquiry in accordance with Service Rules.
- (2) The object of Criminal Trial is to inflict appropriate punishment on the offender while the purpose of enquiry proceedings is to deal with the delinquent employee departmentally and to impose penalty in accordance with the Service Rules.
- (3) In Criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a Court of Law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent employee on a finding recorded on the basis of 'pre-ponderance of probabilities'.
- (4) Facts, charges and nature of evidence, etc involved in an individual case would determine as to whether decision of acquittal would have any bearing on the findings recorded in the domestic enquiry. In case the charges, evidence, witnesses and circumstances are one and the same in the departmental proceedings and the Criminal Proceedings then the acquittal in Criminal Proceedings may have bearing on the penalty imposed on the delinquent employee as a result of the departmental proceedings. However, in case the charges, nature of evidence and circumstances etc. in the departmental proceedings and the Criminal Proceedings are not identical then the acquittal of the delinquent employee by Criminal Court will not have bearing on the penalty imposed on the delinquent employee as a result of departmental proceedings in accordance with Service Rules.

160. ***Keeping in view the aforesaid principles, laid us to examine the present case.***

In the present case, the Charge-sheet dated 17.6.1999 was served on the second party/Workman, inter-alia, stating as under:

“That while working as a Cashier-cum-Clerk at our Goldeval Branch during the period 30.7.1996 to 2.6.1999, you had handed over the letter heads of our Goldeval Branch to one Shri Pramod Sitaram Jaiswal for misusing it for fraudulent purposes. Shri Jaiswal got the Certificate of Bank Financial Guarantee typed on the said Bank’s letter head outside the premises of the Bank and he forged the signature of the Branch Manager. He misused it thereafter to borrow the funds to the tune of Rs.10.00crores in a fraudulent manner.

Your said serious misconducts have not only damaged the reputation/image of the Bank but also exposed it to the heavy financial risk/loss.

Your above act/s if proved, shall constitute the following gross misconduct in terms of Para 19.5 (d) and (j) of Bipartite Settlement as under:

- (1) Wilful damage or attempt to cause damage to the property of the Bank or any of its customers;
- (2) Doing any act prejudicial to the interest of the Bank or gross negligence or negligence involving or likely to involve the Bank in serious loss.”

After the Departmental Enquiry, and the receipt of the Enquiry Report, the Disciplinary Authority by the Order dated 26.4.2000 imposed upon the second party/Workman the penalty of “dismissal without notice with immediate effect”.

161. The Appellate Authority by the Order dated 12.12.2001 concurred with the views of the Disciplinary Authority.

162. On the other hand, in the Criminal Case, the second party/Workman alongwith others was charged for the offences punishable under Section 120-B read with Sections 381, 465, 467, 468, 471, 409 and 511 of the Indian Penal Code on the ground that the accused persons entered into criminal conspiracy in Mumbai city between 11.5.1999 to 16.6.1999 to commit theft of letter heads of Dena Bank and to prepare Guarantee Letter, by using the same for Rs.10 crores and to forge signature of the Bank Officers etc. and use the same as genuine one with knowledge and then to cheat the concerned Bank and other persons if possible and thus the accused persons then succeeded to do so and cheated Dena Bank, Goldeval Branch, Mumbai. Thus, in Criminal Proceedings, the accused persons including the second party/Workman were charged for offences of criminal conspiracy, theft, forgery, cheating, criminal breach of trust etc.

163. Hence, the charges of misconduct levelled against the second party/Workman in the departmental proceedings were different from those levelled against him alongwith other accused persons in Criminal Proceedings. Facts and circumstances to be established in the departmental proceedings for establishing the charge of misconduct and the evidence for proving such facts and circumstances were not the same as were required to be established for proving the charges under various Sections of the Indian Penal Code in Criminal Proceedings against the second party/Workman alongwith other accused persons.

164. It is also to be noted that charges of misconduct in the departmental proceedings against the second party/Workman were to be established on the basis of pre-ponderance of probabilities. On the other hand, in Criminal Proceedings against the second party/Workman and other accused persons, the prosecution was required to prove the guilt of the accused beyond reasonable doubt and the prosecution failed to do so.

165. Hence, the acquittal of the second party/Workman in Criminal Proceedings by the Judgement and Order dated 21.11.2012 would not render the dismissal of the second party/Workman consequent to the departmental enquiry as illegal or unjustified, as contended by Mr.M.B.Anchan, learned counsel for the second party/Workman.

166. As regards the decision of the Supreme Court in ***G M Tank case (supra)***, relied upon by Mr.M.B.Anchan, learned counsel for the second party/Workman, the said decision is distinguishable from the present case. In the said decision, as noted earlier, their Lordships of the Supreme Court emphasised that the departmental proceedings and the criminal proceedings were “based on identical and similar set of facts and the charge in a departmental case against the Appellant and the charge before the criminal Court are one and the same”. On the other hand, as noted in detail above, the situation in the present case is not similar. Therefore, the decision in ***G M Tank case (supra)*** is not applicable to the present case.

167. In view of the above discussion, it is held that the findings of the Enquiry Officer are not perverse. Issue No.2 is decided accordingly.

In conclusion, the findings on Issue Nos. 1 and 2 are summarized below:

Issue No.1: The enquiry held against the second party/Workman was fair and proper.

Issue No.2: The findings of the Enquiry Officer are not perverse.

Award Part-I is passed accordingly.

Justice S. P. MEHROTRA, Presiding Officer

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, MUMBAI

Present : JUSTICE S.P.MEHROTRA, Presiding Officer

REFERENCE NO.CGIT-1/67 OF 2003

Parties : Employers in relation to the management of Dena Bank

And

Their workman (D.R. Dube)

Appearances :

For the first party/Management : Ms. Nandini Menon, Adv.

For the second party/workman : Mr. M. B. Anchan, Adv.

State : Maharashtra

Mumbai, dated this the 10th day of October, 2016

AWARD PART-II

1. The present Reference has been made by the Central Government by its Order dated 22.11.2003 passed in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947. The terms of Reference as per the Schedule to the said Order are as under:

“Whether the action of the management of Dena Bank, Mumbai in terminating the services of Shri D.R.Dube w.e.f.26.4.2000 is justified? If not, what relief the workman, Shri D.R.Dube is entitled to”

2. The second party/Workman D.R.Dubey (hereinafter also referred to as “the Charge-Sheeted Employee” or “CSE”) put in appearance and filed **Statement of Claim dated 15.3.2004**.

3. **Written Statement dated 20.8.2004** was filed on behalf of the first party/Management (hereinafter also referred to as the “first party / Bank” or “The Bank”).

4. In reply to the Written Statement filed on behalf of the first party/Bank, the second party/Workman filed his **Rejoinder dated 6.4.2005** reiterating the averments made in the Statement of Claim.

5. Detailed averments made in the aforementioned pleadings exchanged between the parties have already been narrated in Award Part-I passed in the present Reference.

6. On the basis of the pleadings exchanged between the parties, this Tribunal by the Order dated 14.12.2011, framed the following **Issues** in the present case.

1. *Whether the enquiry held against the workman is not fair and proper?*

2. *Whether the findings of the Enquiry Officer are perverse?*

3. *Whether the action of the management of Dena Bank, Mumbai in terminating the service of the workman D.R.Dube w.e.f.26.4.2000 is justified?*

4. *Relief?*

7. **By Award Part-I dated 6.5.2016**, Issue Nos.1 and 2 were decided as under:

Issue No.1 : Enquiry held against the second party/Workman was fair and proper.

Issue No.2 : The findings of the Enquiry Officer are not perverse.

The present Award Part –II is now being passed in respect of the remaining Issues namely, Issue Nos. 3 and 4.

8. On 6.5.2016, when Award Part-I was pronounced by the Tribunal, the following Order was passed on the Order-sheet:

“Pursuant to the Order dated 05.05.2016, the case is put up today for delivery of Award Part-I.

Mr.M.B.Anchan, learned counsel for the second party/Union and Ms.NandiniMenon, learned counsel for the first party/Management have been telephonically informed by the Office about the fixation of today’s date for delivery of Award Part-I.

Mr.M.B.Anchan, learned counsel for the second party/Union is present.

Ms.NandiniMenon, learned counsel for the first party/Management has telephonically informed the Office that she is in personal difficulty today and, therefore, she will not be present before the Tribunal.

Award-Part I (in respect of Preliminary Issues No. 1 and 2) pronounced in Open Court.

Award Part-I is on separate sheets.

Let the matter be fixed on 14.06.2016 for consideration of the remaining Issues (namely, Issue Nos. 3 and 4)."

9. Pursuant to the Order dated 6.5.2016, the case was put upon 14.6.2016 for consideration of Issue Nos. 3 and 4. On 14.6.2016, the Tribunal passed the following Order:

"Pursuant to the order dated 6/5/2016, the case is put up today.

Mr. M.B. Anchan, learned counsel for the second party/Union is present.

However, none is present for the first party/Management.

In the circumstances, the case is adjourned.

Fix on 22/09/2016 for consideration of Issues No. 3 and 4, as mentioned in the order dated 6/5/2016."

10. Pursuant to the Order dated 14.6.2016, the case was put up on 22.9.2016. On 22.9.2016, the Tribunal passed the following Order:

"Pursuant to the Order dated 14.6.2016, the case is put up today for consideration of Issue Nos. 3 and 4, as mentioned in the Order dated 6.5.2016 read with the Order dated 14.6.2016.

Mr.M.B.Anchan,learned counsel for the second party/Workman is present.

Ms.NandiniMenon, learned counsel for the first party/Management is present.

Mr.M.B.Anchan,learned counsel for the second party/Workman has filed today an affidavit of D.R.Dubey (second party/Workman) in lieu of Examination-in-Chief in respect of Issue Nos. 3 and 4.

Ms.NandiniMenon, learned counsel for the first party/Management has cross-examined D.R.Dubey (second party/Workman). Cross-examination concluded.

On joint prayer made on behalf of the learned counsel for the parties, the case is put up on 03.10.2016 for Arguments in respect of Issue Nos. 3 and 4."

11. Thus, on 22.9.2016, Mr. M.B. Anchan, learned counsel for the second party/Workman filed an Affidavit of D.R. Dubey (second party/Workman) in lieu of Examination-in-Chief in respect of Issue Nos. 3 and 4. Ms. Nandini Menon, learned counsel for the first party/Management cross-examined D.R. Dubey(second party/Workman), and cross-examination concluded.

12. By the Order dated 22.9.2016, the case was fixed on 3.10.2016 for Arguments in respect of Issue Nos. 3 and 4.

13. Pursuant to the Order dated 22.9.2016, the case was put up on 3.10.2016 for Arguments in respect of Issue Nos. 3 and 4.

14. On 3.10.2016, the Tribunal passed the following Order:

"Pursuant to the order dated 22/09/2016, the case is put up today for Arguments in respect of Issue Nos. 3 & 4.

Mr. M.B. Anchan, learned counsel for the second party /Workman refers to the averments made in the Affidavit of D.R. Dube (second party/Workman), filed on 22/9/2016 in lieu of Examination-in-Chief in respect of Issue Nos. 3 & 4, and makes his submissions on the basis of the contents of the said Affidavit.

Ms. Nandini Menon, learned counsel for the first party/Management has submitted Written Submissions along with case-law on behalf of the first party/Management.

Arguments of the learned counsel for the parties concluded today.

Award Part –II reserved."

15. Thus, on 3.10.2016, the Arguments of Mr. M.B. Anchan, learned counsel for the second party/Workman and Ms. Nandini Menon, learned counsel for the first party/Management on Issue Nos. 3 and 4 concluded, and Award part-II was reserved.

16. I have considered the submissions made by Mr.M.B.Anchan, learned counsel for the second party/Workman and Ms.Nandini Menon, learned counsel for the first party/Management on Issue Nos.3 and 4, and perused the record.

17. **Submissions** made by the learned counsel for the parties will be dealt with at the appropriate places while recording Findings on the said Issues.

FINDINGS:

18. **ISSUE NO.3** :As noted earlier, Issue No.3 is as to “*Whether the action of the Management of Dena Bank, Mumbai in terminating the service of the workman D.R.Dube w.e.f.26.4.2000 is justified?*”

19. In order to decide the said Issue, it is relevant to briefly note certain facts which have elaborately been stated in Award Part-I. The second party/Workman at the relevant time was working as a Cashier-cum-Clerk at Goldeval Branch of the first party/Bank. He was issued Charge-sheet-cum -Suspension Order dated 17.6.1999 (Ex.M-1 on the record of this Tribunal) for the alleged misconduct of handing over letter heads of the Branch to one Pramod Sitaram Jaiswal for misusing it for fraudulent purposes. The **Departmental Enquiry** under the applicable Rules was instituted in the matter. Shri A.K.Thakur, the then Senior Manager, Mumbai Suburban Region was appointed as the Enquiry Officer. After the conclusion of the Enquiry Proceedings, the **Enquiry Officer** submitted his **Report dated 2.3.2000** (Ex.M-4 on the record of this Tribunal).

20. **The Disciplinary Authority** sent a **Communication dated 3.3.2000** (Ex.M3 on the record of this Tribunal) to the second party/Workman enclosing there with the Enquiry Findings of the Enquiry Officer as contained in the said Report dated 2.3.2000, and further requiring the second party/Workman to make his submission if any, on the findings of the Enquiry Officer within 7 days of the receipt of the said Communication dated 3.3.2000. It was further stated in the said Communication dated 3.3.2000 that if the Disciplinary Authority would not receive any comment from the second party/Workman within stipulated time, the matter would be dealt with accordingly.

21. The second party/Workman did not submit any Representation or Submission as required in the said Communication dated 3.3.2000 against the findings recorded by the Enquiry Officer. In the circumstances, **the Disciplinary Authority (Deputy General Manager, Mumbai City Regional Office, Mumbai)** passed a **reasoned Order dated 26.4.2000** on a consideration of the material on record including the Enquiry Proceedings, and imposed on the second party/Workman the punishment of “Dismissal without Notice with immediate effect”. Copy of the said Order dated April 26, 2000 passed by the Disciplinary Authority imposing the said punishment on the second party/Workman is Ex.M-5 on the record of this Tribunal.

22. The second party/Workman thereafter preferred an **Appeal dated 12.6.2000** before the Appellate Authority. The Appellate Authority fixed 16.3.2001 for personal hearing of the second party/Workman. In the Appeal, during the personal hearing on 16.3.2001, the second party/Workman requested for adjournment of the personal hearing to 26.3.2001 to enable him to be represented by his Defence Representative. The request of the second party/Workman was accepted, and accordingly, the second party/Workman was given personal hearing by the Appellate Authority on 26.3.2001. After giving personal hearing to the second party/Workman and after considering the relevant records of the case, the **Appellate Authority** passed a **reasoned Order dated 12.12.2001** dealing with various contentions raised by the second party /Workman in his Appeal and concurred with the views of the Disciplinary Authority. Copy of the said Order dated 12.12.2001 passed by the Appellate Authority is Ex.M-6 on the record of this Tribunal.

23. The question for consideration in the context of Issue No.3 is as to whether the imposition of the punishment of “Dismissal without Notice with immediate effect” on the second party/Workman by the Disciplinary Authority was justified. It is well settled that normally the Tribunal does not interfere with the punishment awarded to the Workman after the Enquiry held against the Workman is found to be fair and proper and the findings recorded by the Enquiry Officer are found to be not perverse. It is only when the punishment awarded to the Workman is shockingly disproportionate to the charge of misconduct proved against the Workman that the Tribunal may interfere with the punishment awarded. Reference in this regard may be made to the decisions in **Holy Spirit Hospital & another Vs. Benjamin Fernandes, 2012 (6) Mah.L.J. 566 (paragraphs 21 to 25)** and in **U.P. State Road Transport Corporation Vs. Mohan Lal Gupta and Others, (2000) 9 SCC 521 (paragraph 8)**, relied upon by Ms. Nandini Menon, learned counsel for the first party/Management.

24. Hence, the question is as to whether the punishment of “Dismissal without Notice with immediate effect” awarded to the second party/Workman is shockingly disproportionate to the charges proved against the second party/Workman.

25. In order to decide the said question, it is necessary to refer to the contents of the Charge-Sheet-cum-Suspension Order dated 17.6.1999. Relevant portion of the said Charge-Sheet dated 17.6.1999 is reproduced below:

“That while working as a Cashier-cum-Clerk at our Goldeval Branch during the period 30.7.1996 to 2.6.1999, you had handed over the letter heads of our Goldeval Branch to one Shri Pramod Sitaram Jaiswal for misusing it for fraudulent purposes. Shri Jaiswal got the Certificate of Bank Financial Guarantee typed on

the said Bank's letter head outside the premises of the Bank and he forged the signature of the Branch Manager. He misused it thereafter to borrow the funds to the tune of Rs.10.00 crores in a fraudulent manner.

Your said serious misconducts have not only damaged the reputation/image of the Bank but also exposed it to the heavy financial risk/loss.

Your above act/s if proved, shall constitute the following gross misconduct in terms of Para 19.5 (d) and (j) of Bipartite Settlement as under:

- (1) *Wilful damage or attempt to cause damage to the property of the Bank or any of its customers;*
- (2) *Doing any act prejudicial to the interest of the Bank or gross negligence or negligence involving or likely to involve the Bank in serious loss."*

26. The Enquiry Officer on a detailed consideration of the oral and documentary evidence produced on behalf of the first party/Management and also the admissions made by the second party/Workman, recorded its findings in its Enquiry Report dated 2.3.2000 and, inter-alia, concluded that the charges levelled against the second party/Workman were proved. The Enquiry Officer, inter-alia, recorded finding that "by giving blank letter heads to unauthorized person, Charge-Sheeted Employee has violated the declaration and his own fidelity and has established his unfaithfulness to the Bank. His act of giving letter heads to unauthorized person led to creation of fraudulent document through which Bank would have been exposed to heavy financial loss/risk and would have caused considerable damage to the prestige and reputation of the Bank".

27. The Enquiry Officer, therefore, concluded that the charges levelled against the second party/Workman (Charge-Sheeted Employee) were proved. Hence, the second party/Workman was guilty of gross misconduct in terms of paras 19.5 (d) and 19.5 (j) of Bipartite Settlement namely,

- (1) Willful damage or attempt to cause damage to the property of the Bank or any of its customers;
- (2) Doing any act prejudicial to the interest of the Bank or gross negligence or negligence involving or likely to involve the Bank in serious loss.

28. In view of the gross misconducts established against the second party/Workman as mentioned above, punishment of "Dismissal without Notice with immediate effect" was imposed on the second party/Workman in terms of paragraph 19.6(a) of Bipartite Settlement. It is noteworthy that the second party/Workman was a Bank employee and was working as Cashier-cum-Clerk at Goldeval Branch of the first party/Bank at the relevant time. It is noteworthy that during the Enquiry Proceedings held on 26.11.1999, the Enquiry Officer asked the second party/Workman: "Please go through the declaration form of Fidelity and Secrecy and tell whether you have signed such form at the time of joining the Bank?". The second party/Workman replied: "I might have signed but I do not remember". It is thus evident that the second party/Workman did not specifically dispute the fact that he had signed the Declaration Form of Fidelity and Secrecy at the time of joining the Bank.

29. It is well settled that in the Banking business, absolute devotion, diligence, integrity and honesty needs to be preserved by every Bank employee. Good conduct and discipline are inseparable for the functioning of every employee of the Bank, who deals with Public money and there is no defence available to say that there was no loss or profit resulted in the case. Reference in this regard may be made to the following decisions:

- (a) *Union Bank of India vs. Vishwa Mohan, (1998) 4 SCC 310 (paragraph 12);*
- (b) *Ganesh Santa Ram Sirur vs. State Bank of India and Another, AIR 2005 Supreme Court 314 (paragraph 32);*
- (c) *State Bank of India and Another vs. BelaBagchi and Others, (2005) 7 SCC 435 (paragraph 15).*

Reference may also be made to the decision of the Supreme Court in *State of Bikaner and Jaipur vs. Nemi Chand Nalwaya, (2011) 4 Supreme Court Cases 584 (paragraph 8)*, wherein their Lordships of the Supreme Court emphasized that "when a Court is considering whether the punishment of 'termination from service' imposed upon a Bank employee is shockingly excessive or disproportionate to the gravity of the proved misconduct, the loss of confidence in the employee will be an important and relevant factor."

30. In the present case, the charges proved against the second party/Workman and the misconducts committed by him were of serious nature when examined in the context of the industry (Banking Industry) in which the second party/Workman was working.

31. In view of the proved misconducts committed by the second party/Workman, the first party/Bank evidently lost confidence in the second party/Workman. In view of the loss of confidence in the second party/Workman, the punishment of "Dismissal without Notice with immediate effect" cannot be said to be shockingly disproportionate to the charges proved against the second party/Workman. In my view, the punishment imposed on the second party/Workman was justified. No interference is called for with the said punishment by this Tribunal.

32. Reference in this regard may be made to the decision of the Supreme Court in ***Regional Manager, Rajasthan State Road Transport Corporation vs. Sohan Lal*, (2004) 8 SCC 218 (paragraph 10)**, wherein it has been laid down that in case the Corporation has lost confidence in a workman, continuance of such an employee in the employment of the Corporation by virtue of a Judicial Order is an act of misplaced sympathy which can find no foundation in Law or in Equity. Reference may also be made to the decision in ***Chief Executive Officer, Zilla Parishad, Jalgaon Vs. Maharu Kautik Patil (deceased) through L.Rs. Rajendra Maharu Patil and Others*, 2016 (2) Mah. L.J. 99 (paragraph 20)**, relied upon by Ms. Nandini Menon, learned counsel for the first party/Management, wherein it has been laid down that “*It is trite law that once the charges of grave and serious nature are held to be proved against an employee, no leniency could be shown towards him. Misplaced sympathy in such circumstances is an anathema*”.

33. Again in ***Divisional Controller, Karnataka State Road Transport Corporation vs. M.G. Vittal Rao*, (2012) 1 SCC 442 (paragraph 25)** it has been laid down as under:

“*Once the employer has lost the confidence in the employee and the bona fide loss of confidence is affirmed, the order of punishment must be considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity, and in a case of loss of confidence, reinstatement cannot be directed. [Vide Air India Corpn. V.A. Rebellow, (1972) 1 SCC 814: AIR 1972 SC 1343; Francis Klein & Co. (P) Ltd. v. Workmen, (1972) 4 SCC 569 : AIR 1971 SC 2414; and BHEL v. M. Chandrasekhar Reddy, (2005) 2 SCC 481: 2005 SCC (L&S) 282 : AIR 2005 SC 2769]*”.

34. Hence, in view of the above discussion, I am of the opinion that the punishment of “Dismissal without Notice with immediate effect” imposed on the second party/Workman cannot be said to be shockingly disproportionate to the charges proved against the second party/Workman. Again, the first party/Bank in imposing the said punishment, in my view, was justified.

35. ***Shri M.B. Anchan, learned counsel for the second party/Workman, however, has made various submissions on this Issue No.3. The said submissions are being dealt with below:***

36. **(I)** Mr.M.B.Anchan, learned counsel for the second party/Workman refers to the averments made in paragraph 2 of the Affidavit of D.R.Dubey (second party/Workman) filed on 22.9.2016 and submits that the punishment of “Dismissal without Notice with immediate effect” imposed on the second party/Workman has caused great financial difficulties to the second party/Workman and his family, and the second party/Workman is entitled to sympathetic consideration in determining the quantum of punishment having regard to the financial difficulties faced by him and his family.

37. In reply, Ms. Nandini Menon, learned counsel for the first party/Management submits that in view of the proved misconducts committed by the second party/Workman, the first party/Bank lost confidence in the second party/Workman and in the circumstances, there is no question of any sympathetic consideration being shown to the second party/Workman.

38. I have considered the submissions made by the learned counsel for the parties.

39. As noted earlier, in ***Regional Manager, Rajasthan State Transport Corporation vs. Sohan Lal*, (2004) 8 SCC 218 (paragraph 10) (supra)**, their Lordships of the Supreme Court have laid down that in case the Corporation has lost confidence in a workman, continuance of such an employee in the employment of the Corporation by virtue of a Judicial Order is an act of misplaced sympathy which can find no foundation in Law or in Equity. As already noted, in view of the proved misconducts committed by the second party/Workman, the first party/Bank evidently lost confidence in the second party/Workman. In view of the loss of confidence in the second party/Workman, there is no occasion for the Tribunal to interfere with the punishment awarded to the second party/Workman and direct for his continuance in the employment of the first party/Bank merely on sympathetic consideration. The submission made by Mr.M.B.Anchan, learned counsel for the second party/Workman cannot, therefore, be accepted.

40. **(II)** Mr. M.B. Anchan, learned counsel for the second party/Workman again refers to paragraph 2 of the Affidavit of D.R. Dubey, (second party/Workman) filed on 22.9.2016 and refers to the following averments made in the said paragraph: “I have tried my level best to get a suitable job. Due to the stigma, nobody giving me job”.

41. It is submitted that in view of the above averments made in his affidavit by the second party/Workman, he is entitled to sympathetic consideration in the matter of quantum of punishment.

42. In reply, Ms. Nandini Menon, learned counsel for the first party/Management submits that in his cross-examination on 22.9.2016, D.R.Dubey (second party/Workman) has admitted that he has not given any details regarding the places where he made efforts to get job. Moreover, the submission proceeds, the said aspect namely, inability to get job is not relevant consideration for deciding the quantum of punishment.

43. I have considered the submissions made by the learned counsel for the parties.

44. As noted earlier, in view of the proved misconducts committed by the second party/Workman, the first party/Bank evidently lost confidence in the second party/Workman and in the circumstances, there is no occasion for this Tribunal to interfere with the punishment awarded to the second party/Workman and direct for his continuance in the employment of the first party/Bank on account of any sympathetic consideration. Hence, even if the averments made in paragraph 2 of the Affidavit of D.R.Dubey (second party/Workman) filed on 22.9.2016, as quoted above, were to be believed, the same have no relevance for deciding the question of quantum of punishment. Therefore, the submission made by Mr.M.B.Anchan, learned counsel for the second party/Workman on the basis of the said averments made in the Affidavit, cannot be accepted.

45. **(III)** Mr. M.B. Anchan, learned counsel for the second party/Workman refers to the averments made in paragraphs 3 and 4 of the Affidavit of D.R.Dubey (second party/Workman) filed on 22.9.2016 and submits that the punishment of “Dismissal without Notice with immediate effect” imposed on the second party/Workman is discriminatory. It is submitted that the case of the second party/Workman was that the letter heads were handed over by him to Mr. Pramod Jaiswal as per the instructions of the Branch Manager Mr.Ingle and in presence of Mr.Ingle. It is further submitted that Mr.Ingle was also charge-sheeted and he was also dismissed by the Disciplinary Authority. However, on Appeal made by Mr.Ingle, the Appellate Authority modified the penalty to that of Compulsory Retirement. However, the submission proceeds, in the case of the second party/Workman, the Appellate Authority confirmed the punishment given by the Disciplinary Authority while concurring with the views of the Disciplinary Authority. Consequently, the submission proceeds, while the second party/Workman has been awarded the punishment of “Dismissal without Notice with immediate effect”, Mr.Ingle was compulsorily retired with all the retirement benefits.

46. In reply, Ms. Nandini Menon, learned counsel for the first party/Management submits that the Order of Dismissal in case of Mr. Ingle was converted into one of Compulsory Retirement by the Appellate Authority exercising the discretion and the jurisdiction vested in him. It is submitted that the case of Mr.Ingle and that of the second party/Workman are not similar, and there is no discrimination in the Award of punishment in respect of the second party/Workman.

47. I have considered the submissions made by the learned counsel for the parties.

48. In this regard, it is noteworthy that in the Statement of Claim filed on behalf of the second party/Workman, it was inter-alia, alleged that the co-accused Branch Manager, Mr. Ingle was also dismissed for the same offence by the Disciplinary Authority; and that on an Appeal being made by him, the Appellate Authority modified the penalty to that of Compulsory Retirement. In reply to the said allegations made in the Statement of Claim, the first party/Management, in its Written Statement, inter-alia, stated that the first party/Bank had dismissed Shri Ingle, the then Branch Manager, after a full- fledged enquiry was held against him; and that however, on Appeal, the Order of Dismissal was converted into one of Compulsory Retirement by the Appellate Authority exercising the discretion and the jurisdiction vested in him.

49. In paragraphs 3 and 4 of the Affidavit of D.R.Dubey (second party/Workman) filed on 22.9.2016, it is, inter-alia, stated that “Mr.Ingle was also charge-sheeted. He was not dismissed from service. He was compulsorily retired with all the retirement benefits. However, I was dismissed from service”.

49. Even though the averments in regard to Mr.Ingle as mentioned above, have been made in the Statement of Claim and in paragraphs 3 and 4 of the Affidavit of D.R.Dubey (second party/Workman), but the second party/Workman has not brought on record relevant material to show that the charge-sheet given to Mr.Ingle, Branch Manager, in the Disciplinary Proceedings against him (Mr. Ingle), levelled identical charges as were levelled in the charge-sheet given to the second party/Workman in the Disciplinary Proceedings against the second party/Workman. Further, the second party/Workman has not brought on record material which would show the reasons which prevailed with the Appellate Authority in converting the punishment of Dismissal awarded to Mr.Ingle by the Disciplinary Authority into one of Compulsory Retirement. In order to support his plea of discrimination, it was necessary for the second party/Workman to bring the said relevant material on record. In the absence of such relevant material, the plea of discrimination raised on behalf of the second party/Workman cannot be accepted.

50. Moreover, as noted in Award Part-I, the second party/Workman did not lead any oral or documentary evidence before the Enquiry Officer to substantiate his defence regarding letter heads having been given by him to Mr. Pramod Jaiswal as per the instructions of the Branch Manager and in the presence of Branch Manager. The second party/Workman did not even examine himself before the Enquiry Officer to prove his defence regarding the handing over of the letter heads to Mr. Pramod Jaiswal as per the instructions of the Branch Manager, and in the presence of Branch Manager. In the circumstances, it is evident that the second party/Workman failed to substantiate his said defence.

51. As noted in Award Part-I, the Enquiry Officer on a detailed consideration of the oral and documentary evidence produced on behalf of the first party/Management and also the admissions made by the second party/Workman,

recorded its findings in its Enquiry Report dated 2.3.2000 and, inter-alia, concluded that the charges levelled against the second party/Workman were proved. The Enquiry Officer, inter-alia, recorded finding that “by giving blank letter heads to unauthorized person, Charge-Sheeted Employee has violated the declaration and his own fidelity and has established his unfaithfulness to the Bank. His act of giving letter heads to unauthorized person led to creation of fraudulent document through which Bank would have been exposed to heavy financial loss/risk and would have caused considerable damage to the prestige and reputation of the Bank”.

52. It will thus be seen that while the second party/Workman failed to substantiate his defence, the charges levelled against him were found to be proved by the Enquiry Officer. The said findings recorded by the Enquiry Officer, as held in Award Part-I, are based on consideration of legal evidence placed before it, and the findings recorded by the Enquiry Officer cannot be said to be perverse or illegal.

53. Thus, the second party/Workman failed to establish the involvement of Mr.Ingle, and as such, the plea of discrimination raised on behalf of the second party/Workman cannot be accepted. Again, as the second party/Workman failed to establish the involvement of Mr. Ingle, the plea raised by the second party/Workman in paragraph 4 of his Affidavit filed on 22.9.2016 that he was obeying the orders of his superior, cannot be accepted.

54. Even if we were to assume the defence set up by the second party/Workman regarding handing over of the letter heads to Mr. Pramod Jaiswal as per the instructions of the Branch Manager and in the presence of Branch Manager to be correct, still it is apparent that while the role of Branch Manager was merely passive one, the role of the second party/Workman was active one as it was he who handed over the letter heads to Mr. Pramod Jaiswal. This distinction is relevant when examined in the context of the following:

- (A) *Document Ex.MEX-2 filed on behalf of the first party/Management during Enquiry Proceedings was Account Opening Form of Om Sai Shobha, Proprietor whereof was Tulsiram Ramchandra Agrawal in respect of Current Account No.15009 in Goldeval Branch of Dena Bank. As already noted in Award Part-I, the original of the said Account Opening Form was summoned by this Tribunal whereupon Laxman Khaparde appeared as a witness and stated in his examination-in-chief that “Ex.W-7 is the Account Opening Form of Om SaiShobha of whose proprietor is Tulsiram Ramchandra Agrawal. Ex.W-7(A) is photo copy of Ex.W-7”. It may be mentioned that Ex.W-7 is a copy of the same document as Ex.MEX-2 filed on behalf of the first party/Management during the Enquiry Proceedings. A perusal of Ex.MEX-2 shows that the second party/Workman introduced the said T.R.Agrawal stating that he knew the said person for a long time.*
- (B) *Document Ex.MEX-3 filed on behalf of the first party/Management during the Enquiry Proceedings was photocopy of the Financial Bank Guarantee fabricated on the letter head of Goldeval Branch of Dena Bank in favour of the aforesaid T.R.Agrawal for Rs.10 crores.*
- (C) *Document Ex.MEX-4 filed on behalf of the first party/Management during the Enquiry Proceedings was a statement made by the second party/Workman wherein the second party/Workman, inter-alia, stated that he was acquainted with Shri Jaiswal for 6-7 years, and that he gave 4-5 letter heads to Shri Jaiswal in the presence of Branch Manager, and that it was a mistake committed by him (second party/Workman).*
- (D) *Document Ex.MEX-5 filed on behalf of the first party/Management during the Enquiry Proceedings is again a copy of the Financial Bank Guarantee fabricated in favour of the aforesaid T.R.Agarwal for Rs.10 crores on the letter head of Goldewal Branch of Dena Bank, and at the bottom of the said document Account No.15009 of Om Sai Shobha was mentioned.*
- (E) *In his examination as Management Witness before the Enquiry Officer, H.D.Bengali proved the documents filed on behalf of the first party/Management and, inter-alia, explained the contents of the said documents and also gave account of various other relevant facts and circumstances.*

The above documents clearly showed that the second party/Workman was acquainted with PramodJaiswal for 6-7 years. Further, the second party/Workman introduced T.R.Agrawal, in respect of Current Account No. 15009 in Goldeval Branch of Dena Bank. Financial Bank Guarantee was fabricated on the letter head of Goldeval Branch of Dena Bank in favour of the aforesaid T.R.Agrawal for Rs.10 Crores. Hence, the second party/Workman was already acquainted with Pramod Jaiswal as well as T.R. Agrawal since prior to the incident of handing over of letter heads by the second party/Workman to Pramod Jaiswal. These facts clearly show that the case of the second party/Workman does not stand on the same footing as that of Mr. Ingle.

55. Hence, the plea of discrimination in award of punishment raised on behalf of the second party/Workman cannot be accepted.

56. (IV) Mr.M.B.Anchan, leared counsel for the second party/Workman refers to paragraph 5 of the Affidavit of D.R.Dubey, second party/Workman filed on 22.9.2016 and submits that in view of the Judgment of Criminal Court,

the punishment of dismissal awarded to the second party/Workman be set aside and he be reinstated in service with full back wages and continuity of service or he may be awarded some minor penalty such as stoppage of increments.

57. In reply, Ms. Nandini Menon, learned counsel for the first party/Management submits that the said aspect has already been examined in Award Part-I, and the plea raised on behalf of the second party/Workman has not been accepted. It is submitted that the acquittal of the second party/Workman in Criminal Proceedings would not entitle him to reinstatement or award of minor penalty.

58. I have considered the submissions made by the learned counsel for the parties.

59. In Award Part-I, the effect of Judgment and Order dated 21.11.2012 passed by the Additional Chief Metropolitan Magistrate, 19th Court, Esplanade, Mumbai passed in the Criminal Case being No. 1818/P/2000, filed against the second party/Workman herein (D.R.Dubey) and Others, has already been examined in detail. It has been held in Award Part-I that the acquittal of the second party/Workman in Criminal Proceedings by the said Judgment and Order dated 21.11.2012 would not render the dismissal of the second party/Workman consequent to the Departmental Enquiry as illegal or unjustified. Hence, the plea raised by Mr.M.B.Anchan, learned counsel for the second party/Workman cannot be accepted. There is no question of reinstating the second party/Workman in service in view of the said Judgment and Order of the Criminal Court nor is the said factor relevant for determining the quantum of punishment so as to award any minor penalty as suggested by Mr.M.B.Anchan, learned counsel for the second party/Workman.

60. In view of the above discussion, it is held that the action of the Management of Dena Bank, Mumbai in terminating the service of the second party/Workman D.R. Dubey w.e.f. 26.4.2000 was justified. Issue no.3 is decided accordingly.

61. **ISSUE NO. 4:** As noted earlier, Issue No. 4 is regarding “Relief”. In view of the findings recorded in respect of Issue Nos. 1, 2 and 3, it is evident that the second party/Workman is not entitled to any relief in the present Reference.

62. Hence, Issue No.4 is decided by holding that the second party/Workman is not entitled to any relief.

63. In view of the findings recorded in respect of Issue Nos. 1, 2, 3 and 4, Reference is answered by stating that the action of the Management of Dena Bank, Mumbai in terminating the services of D.R.Dubey (second party/Workman) w.e.f. 26.4.2000 was justified and the second party/Workman D.R.Dubey is not entitled to any Relief in the present case.

64. Award Part-II is passed accordingly.

Justice S. P. MEHROTRA, Presiding Officer